

Maryland. Constitutional Convention, 1967-1968.

Delegate Proposals.

V. 3, No. 201 - 300.

Constitutional Convention

DELEGATE PROPOSAL NO. 201

BY DELEGATE Wheatley

September 27, 1967.

Introduced, read the first time and referred to the Committee on
Suffrage and Elections

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that Article II, Section 2.01 of
2 the Constitution dealing with eligible voters
3 shall read as follows:

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6 Every citizen of the United States who has
7 attained the age of eighteen years, who has
8 been a resident of this State for one year and
9 of the House of Delegates district in which he
10 offers to vote for six months next preceding
11 an election, and who is registered to vote,
12 shall be qualified to vote at such election
13 for all officers to be elected by the people
14 and upon all questions submitted to a vote of the
15 people. Removal from one house district to
16 another in this State shall not deprive a
17 person of his qualification to vote in the
18 house district from which he has removed until
19 six months after his removal.

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Constitutional Convention

DELEGATE PROPOSAL NO. 202

BY DELEGATES Wheatley, Kirkland, Caldwell,
Blair, Sosnowski, Jett, Vecera

September 27, 1967.

Introduced, read the first time and referred to the Committee on
General Provisions

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that Article VIII, Section 8.03 of
2 the Constitution dealing with public education
3 shall read as follows:
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5 The General Assembly shall provide for a
6 local board of education in each of the sub-
7 divisions of the state and it shall be the
8 local agency responsible for implementing the
9 public educational system required by this
10 Constitution. Each subdivision shall be per-
11 mitted to determine through referendum that its
12 board of education be appointed by the Governor
13 or elected by the qualified electorate of that
14 subdivision for such terms and with such
15 qualifications as may be provided by law and
16 whether such board of education shall be
17 granted the authority to raise, through taxa-
18 tion and expend by budget, those funds required
19 for public education in that subdivision subject
20 to such limitation as the General Assembly may
21 provide by law.

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Constitutional Convention

DELEGATE PROPOSAL NO. 203

BY DELEGATE (s) CASE AND DARBY

September 27 , 1967.

Introduced, read the first time and referred to the Committee on
General Provisions

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that no child attending an ac-
2 credited primary or secondary school shall be
3 denied the use of available transportation
4 facilities supplied by the Boards of Educa-
5 tion of any County upon the same terms and
6 conditions as any child attending schools
7 maintained by such Boards of Education.
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MEMORANDUM ACCOMPANYING PROPOSAL #203

Would a provision in the Maryland Constitution to the effect that children may be transported to non-public schools by public school buses if and when space is available for such transportation violate any of the provisions of the Federal Constitution? Under the law as it presently stands, the answer appears to be that it would not.

Objections to the validity of statutory provisions of this type are usually made on the ground that they are unconstitutional as (i) aiding sectarian institutions or violating guarantees of religious freedom, (ii) misusing public school funds, or (iii) appropriating public funds for private purposes. Annot., 168, A.L.R. 1434-1435 (1947).

In 1946, the United States Supreme Court in Everson v. Board of Education, 330 U.S. 1, was asked to pass upon the constitutionality of the action of the Board of Education of the Township of Ewing, New Jersey in authorizing reimbursement to parents of expenditures for their children's transportation on buses of the public transportation system where a part of the money was for paying the transportation expenses of children attending Catholic parochial schools. The majority of the Court (four Justices dissented) decided, first, that the contested action and the statute, authorizing local school districts to make rules and contracts for the transportation of school children, under which the action was taken, served a public purpose (although it may, in addition, have helped certain parents carry out their private purposes), and thus did not violate the Fourteenth Amendment to the Federal Constitution.

Secondly, the Court said that (p.17) "we cannot say that the First Amendment (which is applicable to the States through the Fourteenth) prohibits New Jersey from spending tax-raised funds to pay the bus fares of parochial school pupils as a part of a general program under which it pays the fares of pupils attending public and other schools," and further (p.18): the "legislation, as applied, does no more than provide a general program to help parents get their children, regardless of their religion, safely and expeditiously to and from accredited schools."

This year, the Supreme Court of Pennsylvania in Rhoades v. School District of Abington Township, 226 A.2d 53 (1967) upheld the constitutionality of a statute providing (p.56) that

"When provision is made by a board of school directors for the transportation of resident pupils to and from the public schools, the board of school directors shall also make provision for the free transportation of pupils who regularly attend nonpublic elementary and high schools not operated for profit."

The statute had been attacked on the grounds, among others, that it was repugnant to the First and the Fourteenth Amendments to the Federal Constitution, and the Court commented (p.62): "The Everson case is the law of the land and rules squarely against the contentions of the plaintiffs in the Courts below in so far as the Federal Constitution is concerned."

The case, however, is not yet finally concluded. On April 24, 1967, a petition for a writ of certiorari was filed in United States Supreme Court. The case's docket number is 1318 of the 1966-67 term, and to date the petition apparently has not been acted on.

The Maryland Court of Appeals in Adams v. St. Mary's County, 180 Md. 550 (1942), and in Board of Education v. Wheat, 174 Md. 314 (1938) considered whether the public busing of non-public school students was unlawful and in both cases determined that it was not. In the latter case, at the suit of a pupil of a Roman Catholic parochial school in Baltimore County, the lower and appellate courts decided that the following statute was not violative of Articles 15 and 23 of the Maryland Declaration of Rights or the Fourteenth Amendment to the United States Constitution as using public funds for private purposes (p.316):

"The statutory provision (Acts 1937, ch. 185, p. 321, sec. 146A), is that all children who attend schools in . . . [Baltimore] county which do not receive state aid, and who reside on or along or near the public highways on which there is now or hereafter operated a public school bus provided by the Board of Education for transporting children to and from the public schools, shall be

entitled to transportation on the same buses from a point on the highway nearest or most accessible to the home of the child to a point nearest or most accessible to its school, without changing the route of the bus, upon the same terms as those provided for public school children. A second section of the statute (Acts 1937, ch. 185, p. 322, sec. 146B) provides for the raising of money necessary, not exceeding \$15,000, for the additional expense, and authorizes the establishment of additional bus routes."

The Court of Appeals said further (p.323) that since it had concluded that the Act in dispute "must be regarded as one within the function of enforcing attendance at school," it was not necessary "to consider separately the objection that a religious institution is aided. Art. 36, Declaration of Rights. The institution must be considered as aided only incidentally, the aid only a by-product of proper legislative action."

In Adams v. St. Mary's County, the Court of Appeals held constitutional a statute which provided that the County Commissioners of St. Mary's County (p. 552) "should levy and appropriate the sum of \$10,000 'for the transportation to and from school of children attending schools in St. Mary's County not receiving State aid.'" The schools in the County not receiving State aid were Roman Catholic parochial schools which owned their own school buses. Contracts had been made with their directors to distribute to each of them a certain proportion of the \$10,000 fund.

One of the grounds upon which the statute was attacked was that it appropriated public funds for private purposes. The Court said (p. 556):

"the view taken in the Wheat case was that it could have been the design of the General Assembly in the statute considered to give aid and protection to the children on the highways, or to facilitate the compulsory attendance at some school, and that the possibility of this design prevented holding the enactment unconstitutional . . . This court still considers that reasoning sound and adheres to the decision on that statute."

In summary, the provision proposed to be included in the Maryland Constitution is much less broad than the action examined by the Court of Appeals in Adams and by the Supreme Court in

Everson v. Board of Education. The instant proposal involves transporting nonpublic school students on a space-available basis only. For this reason and for the reason that the Supreme Court decided specifically in Everson that the action taken by the Township of Ewing violated neither the First nor the Fourteenth Amendments, it appears clear that the proposal, under present law, is not unconstitutional. There is, of course, always the possibility that the Supreme Court may reverse itself and, as explained above, it presently has before it a case in which it could do so.

Richard Case

Perry Darby

Constitutional Convention

DELEGATE PROPOSAL NO. 204

BY DELEGATE FINCH

September 27, 1967.

Introduced, read the first time and referred to the Committee on
Executive Branch

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution contain a
2 provision that the power to grant reprieves
3 and pardons (except in the cases of convic-
4 tion upon impeachment), and to remit fines and
5 forfeitures, for offenses against the State
6 be placed in a committee composed of the
7 Governor, the President of the Senate, and the
8 Chief Judge of the Supreme Court.

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CONSTITUTIONAL CONVENTION OF MARYLAND

Memorandum Accompanying Delegate Proposal No. 204

By Delegate Walter G. Finch , Ref. To The Executive Branch

This proposal would require that the Constitution contain a provision that the power to grant reprieves and pardons (except in the cases of conviction upon impeachment), and to remit fines and forfeitures, for offenses against the State be placed in a committee or a commission possibly made up of the Governor, the President of the Senate and the Chief Judge of the Supreme Court.

This proposal would establish a procedure whereby the great power to grant reprieves and pardons would be removed from the Governor's judgement alone, to a majority judgement of three persons directly responsible to the people.

As the pardon power to place in the hands of three persons in the State Board of Parole and Probation in the current parole processes, so would the pardon and reprieve powers as well as the right to remit fines and forfeitures be placed in the hands of a responsible committee, thus relieving the Governor of a great deal of detail.

Attest:
Secretary of the Board of Trustees
College Park, Md.

Constitutional Convention

DELEGATE PROPOSAL NO. 205

BY DELEGATE Finch

September 27 , 1967.

Introduced, read the first time and referred to the Committee on
Personal Rights and Preamble

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Declaration of Rights
2 contain a provision guaranteeing the
3 citizens of the State the right of "Freedom
4 of Mobility" (provided that in the exercise
5 of such right no law is breached or rights
6 of others infringed).
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CONSTITUTIONAL CONVENTION OF MARYLAND

Memorandum Accompanying Delegate Proposal No. 205

By Delegate Walter G. Finch, Ref. to Personal Rights
and the Preamble

This proposal calls for the Declaration of Rights to contain a provision guaranteeing the citizens of this State of "Freedom of Mobility" (provided that in the exercise of such right no law is breached or rights of others infringed). This proposal is directed not so much to conditions which have occurred in the past, but to conditions that may occur in the future.

This "Freedom of Mobility" principle would be in conjunction with the freedom of expression and freedom of association. It is further a check on the police powers which could, in the future, become much broader than that which is known today. It seems to be sound policy to have within the basic law of Maryland the expressed "Freedom of Mobility", and for this reason this particular proposal has been suggested.

An example would be the requirement that prior to traffic being limited in specific areas because of special police problems, that sound reasoning be expressly stated for such restrictions. Under a general police power provision, this could possibly be a problem within the not too distant future.

For instance, it is feasible that with automobile congestion becoming greater and greater every day, that in order to alleviate some traffic problems, that under the general police powers certain jurisdictions within the State of Maryland could prevent mobility of traffic in certain areas during certain times of the week.

This may well be established upon sound research. This is the way it should be, not with some general restrictions being placed under the pretext of utilizing general police powers. Some of the officials responsible for the traffic problem would have further checks upon themselves when they make general administrative ruling.

Another example of an infringement of this freedom would be perhaps where some overzealous police officials attempt to circumvent the freedom of assembly by actually disallowing people the mobility for reasons that they can consider valid under general police powers.

A "Freedom of Mobility" section within the Maryland Constitution would, of course, prevent such overzealous action by officials in the future, and would further guarantee the citizens of this State their full constitutional rights which are certainly implied in this area within our Federal Constitution. The expressed powers of "Freedom of Mobility" certainly have to be definitely stated within the Maryland Constitution.

Constitutional Convention

DELEGATE PROPOSAL NO. 206

BY DELEGATE FINCH

September 27, 1967.

Introduced, read the first time and referred to the Committee on
Suffrage and Elections.

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the right to vote in nation-
2 al, state and local elections shall be enjoyed
3 by all persons, duly qualified according to
4 law, including all military or naval personnel
5 of the United States who reside on land in
6 Maryland over which the United States exer-
7 cises exclusive jurisdiction (provided that
8 such residence shall have continued for the
9 period of time prescribed by law.)

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THE BUREAU OF PLANT INDUSTRY U.S. DEPARTMENT OF AGRICULTURE

OFFICE OF THE CHIEF OF BUREAU
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C O N S T I T U T I O N A L C O N V E N T I O N O F M A R Y L A N D

Memorandum accompanying Delegate Proposal No. 206

By: Delegate Walter G. Finch, referred to Suffrage
and Elections

This proposal would make it possible for all persons in the State, both military and civilian, to enjoy the right to vote in the national, state and local elections.

The language used in this proposal is essentially the concept of Section 2.03 of the Commissions draft, with the addition of eligibility to vote in local elections as well as national and state elections.

Federal reservation and enclaves are the residence of many, who are present in this state for extended periods of time; and such persons are required to pay State Income Taxes, Sales and Use taxes, gasoline taxes and Motor Vehicle Registration and Operators License fees. In addition, they are subject to Maryland Law in certain instances and such law is also available to them in the form of its protection in traveling.

For these reasons, these persons should not be denied the right to vote in national, state and local elections.

The contrary arguments are that such individuals are transient and particularly, in relation to local elections that they are unfamiliar and have narrow interests in local matters, and in addition to the fact that they pay no local property taxes. However, it is felt that these are insufficient reasons for denying such persons the right to vote in various elections in Maryland.

Constitutional Convention

DELEGATE PROPOSAL NO. 207

BY DELEGATE Juanita Jackson Mitchell

September 27 , 1967.

Introduced, read the first time and referred to the Committee on
Suffrage and Elections.

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that Article I of the Constitu-
2 tion, dealing with The Declaration of Rights,
3 shall include a provision regarding the right
4 to vote, to read as follows:

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7 Section: The Right to Vote

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9 The right to vote shall not be abridged on
10 account of religion, race, color, sex, or
11 economic circumstance.

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Constitutional Convention

DELEGATE PROPOSAL NO. 208

BY DELEGATE FINCH

September 27 , 1967.

Introduced, read the first time and referred to the Committee on
State Finance and Taxation.

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution contain a
2 provision placing a Treasury Department
3 (State Treasurer) in the Executive Branch;
4 A Bureau of the Budget in the Executive
5 Branch; and a General Accounting Office,
6 headed by a Comptroller General (for inter-
7 nal audits of all governmental agencies,
8 departments and instrumentalities) in the
9 Legislative Branch; with the Comptroller
10 General being appointed by the Governor and
11 confirmed by the Senate, and the Directors
12 of the Bureau of the Budget and the Treas-
13 ury Department being appointed by the
14 Governor (with the current office of
15 Comptroller being abolished); and further
16 with all state finances being externally
17 audited by independent firms of certified
18 public accountants.

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C O N S T I T U T I O N A L C O N V E N T I O N O F M A R Y L A N D

Memorandum Accompanying Delegate Proposal No. 208

By Delegate Walter G. Finch

This proposal relates to a reorganization of the financial structure of the State by urging that the Constitution contain a provision placing a Treasury Department (State Treasurer) in the Executive Branch; a Bureau of the Budget in the Executive Branch; and a General Accounting Office, headed by a Comptroller General (for internal audits of all governmental agencies, departments and instrumentalities) in the Legislative Branch; with the Comptroller General being appointed by the Governor and confirmed by the Senate, and the Directors of the Bureau of the Budget and the Treasury Department being appointed by the Governor (with the current office of Comptroller being abolished); and further with all state finances being externally audited by independent firms of certified public accountants. This proposal is to be considered in conjunction with Delegate Proposal Nos. 153, 253 , and 274 .

Currently, the State Treasurer is elected by the General Assembly and he is accountable for all of the cash paid to the State and for the disbursement thereof. The State auditor is appointed by the Governor and he is placed under the Comptroller for administrative purposes. The State auditor is responsible for internal audit of the various finances of all governmental agencies, departments and instrumentalities. Thus, the Comptroller who is over the State auditor, is thus able to control the activities of the State auditor. In effect, the Comptroller audits its own office. The Budget Director, on the the other hand, is appointed by the Governor and is subject to his jurisdiction.

In order to get a better control of State finances, it is suggested that the post audit procedure be under the legislature who would be responsible for establishing a general accounting office, headed by a Comptroller General. Such an arrangement would be similar to that of the Federal Government. The proposal further provides that the functions of the State treasurer would be transferred to the Executive Branch of Government and would become under a Treasury Department as one of the major departments of the Executive Branch of Government. Within that same office could be a Bureau of the Budget whose responsibility would be to prepare the various budgets which

must be submitted by the Governor to the Legislative Branch of Government for approval and enactment of suitable legislation.

Thus, the proposal suggested above would be in line with the recommendations made by the "Joint Legislative Committee On Executive Current Expense Budget" where on page 13 of report number 1, it was recommended that (a) the post-audit function in Maryland should be transferred by statute from the executive branch (the State Auditor is now appointed by the Governor and reports primarily to the Comptroller) to the legislative branch; and (b) the work of the legislative auditor should be addressed not only to agency compliance with the budget and other pertinent laws but also to general performance of the agencies and suggested improvements thereof; and (c) the joint budget committee proposal mentioned above should have direct supervisory responsibility for the legislature's budget analysis and post-audit work and should be called the Joint Budget and Audit Committee; (d) the present Fiscal Research Bureau should be detached from the Department of Legislative Reference and should become the nucleus of an expanded fiscal staff, which would be composed of three main components: an audit staff (under the Legislative Auditor and presumably transferred from the present State Auditor's Office), a budget analysis staff (under the Legislative Analyst), and a research staff (under a research director). The research staff would handle non-budget fiscal research into areas such as taxation and assessments and would service the Committee on Taxation and Fiscal Matters and other such groups. The audit office would be an independent component reporting directly to the J.B.A.C., but the two others might well be combined as divisions of a Department of Fiscal Services, and (e) great care should be given to devising a method of appointment of department and division heads that will assure selection on a basis of professional competency, and the department heads should have broad powers with respect to the selection and retention of their own staffs.

"Both committees have consistently regarded the budget and audit proposals set forth as a necessary step to restore the balance between the main branches of state government and to strengthen the legislature as a meaningful "check" within the doctrine of separation of powers. At no time has this been a partisan effort to transfer powers from a Republican Governor to a Democratic Legislature." In addition to the above, it is felt that external audits should be conducted by independent firms of certified public accountants, that is, firms not connected with the

State Government which firms would give independent opinions as to the State financial structure and how it is being carried out.

Constitutional Convention

DELEGATE PROPOSAL NO. 209

BY DELEGATE FINCH

September 27, 1967.

Introduced, read the first time and referred to the Committee on
The Judicial Branch.

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that a provision be contained in
2 the Constitution that a Court of Claims
3 (claims against the State, a municipality or
4 county), shall be composed of at least three
5 judges, with two judges constituting a quorum
6 and with the concurrence of two judges being
7 necessary for a decision in a case; with said
8 Court of Claims having original jurisdiction
9 prescribed by law, and further with said
10 judges being appointed by the Governor from
11 a list of at least two, but no more than
12 five eligible lawyers qualifying as pres-
13 cribed by law nominated by a judicial
14 nominating commission.

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Handwritten:
Maryland State Library
College Park, Md.

C O N S T I T U T I O N A L C O N V E N T I O N O F M A R Y L A N D

MEMORANDUM by Delegate Walter G. Finch,
Accompanying Delegate Proposal No. 209

This proposal relates to the establishment of a Court of Claims in the Judiciary Branch of state government, similar to the U. S. Court of Claims, for judicial processing of all claims, either monetary or non-monetary against the State of Maryland.

On February 24, 1855, a special Federal Court was established by the United States to provide an effective means by which persons having claims against the United States might obtain satisfaction. Formerly, such persons had no recourse except through appeal to the Congress. This court was created under the power to appropriate money to pay the debts of the United States. The court was authorized to hear and adjudicate claims of private persons against the Government and to report its findings to Congress or to the Department of Government concerned. Since 1887, it has handled suits against the United States for breaches of contracts and since 1946, under the Federal Tort Claims Act, has heard suits caused by negligent or unlawful acts of a government employee. In order to clarify the confused status of this Court, Congress, in 1953, declared it to be a court established under Article III of the U. S. Constitution. (Ogg and Ray, Essentials of American National Government, p. 308). It is to be further noted at one period in its history, this court was considered to be a "legislative court".

In Maryland, like in many other states, under the prevailing theory of state sovereignty, the state may not be sued without its express consent, which is usually given by legislative enactment. Some states do permit suits against themselves in their regular courts.

Here, in the instant delegate proposal, such a court, namely a Maryland Court of Claims, should be created and empowered to hear and determine all claims founded on any statute or act of the State legislature or on any regulation of an executive department, or on any contract, either expressed

or implied, with the State of Maryland. In addition, such a court would hear all claims which may be referred to it by either house of the General Assembly. Such a court, in addition, could have jurisdiction of torts and wrongs committed by any officer or employee of the State and its various agencies. The court could have equity jurisdiction.

There are many types of litigation from the various administrative, regulatory, and executive agencies which the court could have original jurisdiction, including, but not limited to, condemnation by eminent domain, taxation, zoning, insurance, utilities, welfare, election, liquor, contracts and torts, to name only a few.

Such a court would be able to reduce the heavy load on the regular court system of the state since it would be a specialized court hearing only those cases involving claims either of a monetary or non-monetary nature against the State. The judges of this court would be specialists.

Proceedings in such a court would be instituted by petition, with the procedure to be followed being generally that followed in the conventional courts of the State. In certain cases, especially on a constitutional question, appeal would be taken directly to the highest court in the State.

It is to be noted further, that similar courts have been established in other American states, and recently such a court has been included in the New York Constitution to hear tort cases involving the State of New York.

The proposed court would be a Court of Record. The judges would be appointed by the Governor, with advice and consent of the Senate for ten (10) year terms.

In summary, the court would have jurisdiction including, but not limited, to hearing and determining claims against the State or by the State against a claimant or between conflicting claimants as the General Assembly may prescribe.

Constitutional Convention

DELEGATE PROPOSAL NO. 210

BY DELEGATE FINCH

September 27, 1967.

Introduced, read the first time and referred to the Committee on
The Judicial Branch.

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that a provision be contained in
2 the Constitution that the judicial power of
3 the State is vested exclusively in a unified
4 judicial system composed of the Supreme Court,
5 the Appellate Court, the Court of Claims
6 (claims against the State, a municipality or
7 county), the Superior Court and the District
8 Court.
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INSTITUTIONAL CONVENTION OF MARYLAND

Memorandum Accompanying Delegate Proposal No. 210

By Delegate Walter G. Finch, Ref. to The Judicial Branch

This proposal calls for a Court of Claims to be established in addition to having a Supreme Court, the Appellate Court, the Superior Court and the District Court, or the four court tier in the State of Maryland.

The Court of Claims would have jurisdiction of all claims against the State, all of its agencies and instrumentalities, municipalities or counties of the States.

The proposal is to be considered in conjunction with Proposal No. 209 which calls for the Court of Claims to have at least several judges; that is, a minimum of two and no more than five who would be appointed by the Governor after being nominated by a judicial nominating commission.

Maryland, like many other states in the Union, under the prevailing theory of state sovereignty, may not be sued without its express consent. This consent, as a general rule, is given by legislative enactment. Some states in the United States, however, do permit themselves to be sued in their regular courts.

In 1855, the United States provided a special Federal Court wherein the Federal Government could be sued by persons which had claims against the United States in order to obtain legal and equitable satisfaction. This court was authorized to hear and adjudicate claims of private persons against the government and to report its findings to Congress or the department of government which was concerned.

Since 1887, the United States has allowed individuals, and businesses, to sue the United States for breach of contract. In 1946, under the Federal Tort Claims Act, the United States allowed suits against it caused by negligence or unlawful acts of a government employee. In 1953, Congress established the United States Court of Claims under Article III of the U. S. Constitution. See Ogg and Ray, Essentials of American National Government, page 308.

This proposal, therefore, would create a new Maryland Court of Claims which would be empowered to hear and determine all claims founded on any statute or act of the State Legislature or on any regulation of the Executive Department, or on any contract, either expressed or implied, with the State of Maryland, any of its agencies, local governments, and municipalities, or any other types of instrumentalities.

The Court of Claims, would, in addition, hear all claims which may be referred to it by either House of the Legislature. In addition, such a court would have jurisdiction of torts and wrongs committed by any of the officers or employees of the State and its various agencies. The court could have equity jurisdiction.

The court could handle many types of litigation from the various administrative, regulatory and executive agencies and instrumentalities of the government including original jurisdiction. These cases could include condemnation proceedings by eminent domain, taxation, zoning, insurance, utilities, welfare, election, liquor, contracts and torts, to name only a few.

Proceedings in such a court would be instituted by a petition with the procedure to be followed being generally that followed in the conventional courts of the State.

On a special constitutional question, appeal could be taken directly to the Supreme Court of the State. The proposed court would be a court of record with the judges being appointed by the Governor from a list furnished by a nominating commission. They would be confirmed by the Senate for a term of years, for example, ten years.

In summary, therefore, the Court of Claims of Maryland would have jurisdiction including, but not limited to, hearing and determining claims against the State or by the State against the Claimant, or between conflicting Claimants as the General Assembly or Legislature may prescribe.

Constitutional Convention

DELEGATE PROPOSAL NO. 211

BY DELEGATE FINCH

September 28, 1967.

Introduced, read the first time and referred to the Committee on
The Executive Branch

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution contain a
2 provision that the Governor shall annually
3 inform the citizenry of the State, as well
4 as the General Assembly, both in writing
5 and in person utilizing proper modes of
6 communication (radio, television, news-
7 papers and personal appearance) of the
8 general conditions of the State, together
9 with concrete recommendations necessary to
10 improve the general welfare of the citi-
11 zenry of the State.

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Constitutional Convention

DELEGATE PROPOSAL NO. 212

BY DELEGATE FINCH

September 28 , 1967.

Introduced, read the first time and referred to the Committee on
The Executive Branch

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution contain a
2 provision that the Governor (and a Lieu-
3 tenant Governor) have the option to elect
4 to retain his voting residency at his per-
5 manent residence prior to election as
6 Governor.

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C O N S T I T U T I O N A L C O N V E N T I O N O F M A R Y L A N D

Memorandum Accompanying Delegate Proposal No. 212

By Delegate Walter G. Finch ref. The Executive Branch

This proposal would provide in the Constitution that both the Governor and the Lieutenant Governor would have the option to elect to retain their voting residency at their permanent residence prior to election as Governor.

It has long been felt that such option should be given to the Governor, as well as a Lieutenant Governor if the Constitution provides for this office, in view of the fact that the Governor is only a temporary resident of Annapolis for a period of four years which can be extended for another period of four years. In addition, this would generally follow the trend in the Country where one's voting residence is his domicile.

By allowing the above in the Constitution, it is believed that this would eliminate many problems that might arise pertaining to the voting residency of the Governor.

Constitutional Convention

DELEGATE PROPOSAL NO. 213

BY DELEGATE F. C. ROBEY

September 28 , 1967.

Introduced, read the first time and referred to the Committee on
Suffrage and Elections

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that a Section of the Article on
2 Suffrage and Elections in the Constitution
3 dealing with eligible voters in presidential
4 elections shall read as follows:
5

6 For purposes of voting in the election
7 for President and Vice-President of the
8 United States or for presidential electors
9 in that election only, the General Assembly
10 shall provide for voting by former qualified
11 voters of Maryland who have removed here-
12 from, providing they do not meet the voting
13 residence requirements of the state to
14 which they have removed.
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Constitutional Convention

DELEGATE PROPOSAL NO. 214

BY DELEGATE Robey

September 28 , 1967.

Introduced, read the first time and referred to the Committee on
The Executive Branch

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that a provision mandating a
2 merit system for the public employees of
3 the State be included in the Constitution.

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Constitutional Convention

DELEGATE PROPOSAL NO. 215

BY DELEGATES Lord and Jett

September 28, 1967.

Introduced, read the first time and referred to the Committee on

The Legislative Branch

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that Section 3.08 of Article III
2 of the draft Constitution proposed by the Con-
3 stitutional Convention Commission, dealing with
4 compensation of legislators, shall read as
5 follows:
6

7 The members of the General Assembly shall
8 receive a minimum annual salary of \$7,500 and
9 such additional annual salary as may be estab-
10 lished from time to time by law. The members
11 of the General Assembly shall receive such
12 pension and related benefits as may be pre-
13 scribed by law, which pension and related
14 benefits shall be no greater than those provided
15 to all other members of the Employees' Retirement
16 System of the State of Maryland compensated at
17 the identical salary level.
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CONFIDENTIAL

CONFIDENTIAL

CONSTITUTIONAL CONVENTION OF MARYLAND
MEMORANDUM ACCOMPANYING PROPOSAL NO. 215

We believe that the salary of \$2,400 for members of the General Assembly, established in Section 15 of Article III of the present Constitution, is totally inadequate to compensate the members for their challenging and demanding work. We recommend a constitutional minimum salary of \$7,500 with such increases as the General Assembly may authorize by law.

There is a possibility of inequity at the other extreme, however, unless the pension system of the General Assembly is tailored to conform to the pensions of other state employees. As it now stands, under Article 73B, Section 11 (13) of the Maryland Code (which became effective on July 1, 1966), members of the General Assembly receive a pension based upon 5% of their last year's salary multiplied by the number of years of service (with a 20-year maximum creating a 100% pension). Virtually all other state employees receive a pension based upon 1.43% of the average of the five highest years of salary multiplied by the number of years of service. By way of comparison at the \$2,400 salary level, with 10 years' service, a member of the General Assembly would receive \$1,200 per year in pension while other state employees would receive \$342.86 a year in pension. In addition, state employees contribute approximately three times as much into the Retirement System as members of the General Assembly during their years of service before qualifying for a pension.

Under the existing salary scale, this pension partially redresses the inequitably low salary of members of the General Assembly. If this proposal is adopted, however, this salary is more than trebled while in other proposals it may be as much as quintupled. This would greatly magnify the pension disparity. For instance, at the \$12,500 salary

(over)

MEMORANDUM ACCOMPANYING PROPOSAL NO.

level, recommended by one proposal, after ten years of service members of the General Assembly would receive \$6,250 per year in pension while other similarly situated state employees would receive \$1,785.71 per year in pension.

We feel that it is important that Section 3.08 of Article III contain a provision which would override Article 73B, §11 (13) of the Maryland Code and would place members of the General Assembly in the same pension category as all other similarly situated state employees.

Henry R. Lord

R. Samuel Jett

CONSTITUTIONAL CONVENTION OF MARYLAND

Supplementary Memorandum Accompanying Proposal #215

By Delegates Lord and Jett - referred to The Legislative Branch

The following editorials from the Sunpapers should be read in connection with this proposal as they express the views of the sponsors with respect to legislative pensions.

UNFAIR PENSIONS

"There is a basic first step that must be taken in any moves to modernize and upgrade the General Assembly. Indeed, it is a step that must be taken even if the present legislative set-up remains untouched by the Constitutional Convention. The special pension system the members of the General Assembly created for themselves by statute in 1966 is far too liberal and should be repealed.

At the time the system was set up it was argued that the legislators were ill-paid, that they were entitled to special pension benefits. Now there are moves to increase the salary of a legislator to, say, \$10,000. The result: the pension would be one twentieth of the last annual earnable compensation for each year of service or \$10,000 for twenty years of legislative service. That is too much even in the light of the rather large contribution a legislator would make toward it."

Sunday Sun, October 1, 1967

PAY AND PENSION

"As adopted in 1867 the present State Constitution set the salaries of members of the General Assembly at \$5 for each day of attendance at a legislative session. From the start that basic law also provided, and still provides, that 'no general pension system' shall be established in this State. In a hundred years there have been long moves away from those constitutional positions.

The salaries of senators and delegates have been shifted from a per diem to an annual base of \$2400. As to pensions, the State has long since created an actuarially sound and contributory Employees' Retirement System. And as for themselves, the legislators have created a special pension set-up that offers pensions up to a full salary after 20 years of service. There is where the rub comes.

A sound case can be made for substantial salary increases for legislators. A way toward that end is provided for in the draft constitution now before

the Constitutional Convention; a section would permit the lawmakers to fix their own salaries. That, without doubt, would lead to salary increases. But under the special pension system it would bring corresponding substantial increases in pensions--increases that would be clearly excessive.

Two delegates to the Constitutional Convention--R. Samuel Jett and Henry R. Lord, both of the Second Baltimore city district--have joined in sponsoring a proposal to set the minimum salary for legislators at \$7500 with a provision for pensions in line with the retirement system for other State employees. Under their proposal the legislators' salaries could be raised by statute above the \$7500 minimum, but the uniform standard for pension schedules would be fixed in the constitution. This is a direct way of eliminating the special privilege embodied in the present pension arrangement, and it deserves attention."

Sunday Sun, October 7, 1967

Constitutional Convention

DELEGATE PROPOSAL NO. 216

BY DELEGATES Bennett, Byrnes, Cardin, Chabot, Darby,
Frederick, Grumbacher, Hutchinson, D.Murray, Rybczynski,
Scanlan, Schloeder, Soul, White, Bamberger

September 28 , 1967.

Introduced, read the first time and referred to the Committee on

General Provisions

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that Article VIII of the Constitution
2 dealing with General Provisions, include a pro-
3 vision regarding qualifications for holding pub-
4 lic office, to read as follows:

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Section . Qualifications for
Public Office

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No ownership of an interest in property shall
be required as a condition for holding any elective
or appointive office, except that officeholders
may be required by statute to furnish appropriate
bonds.

Constitutional Convention

DELEGATE PROPOSAL NO. 217

BY DELEGATE BYRNES

September 28, 1967.

Introduced, read the first time and referred to the Committee on
The Executive Branch

By order, IRA J. WASHINGTON, Chief Clerk.

TITLE

1 A PROPOSAL providing for the office of State's
2 Attorney, and matters generally relating
3 thereto.
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7 1. In such jurisdictions as may be
8 provided by law, there shall be an Attorney for
9 the State to be known as "The State's Attorney"
10 whose responsibilities and compensation shall be
11 as provided by law.
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13 2. The General Assembly shall provide for
14 the terms, administration, and coordination of
15 the various offices of State's Attorneys, includ-
16 ing the appointment, terms, qualifications and
17 salaries of such Deputy and Assistant State's
18 Attorneys as it may deem desirable.
19

20 3. The method of appointment of the State's
21 Attorney in each such jurisdiction shall be as
22 follows:
23

24 a. In each jurisdiction in which a
25 State's Attorney is or is appointed, the General
26 Assembly shall provide for the establishment of
27 a commission which shall be responsible for
28 recommending to the Governor the names of not
29 more than five persons professionally capable of
30 filling the office of the State's Attorney.

1 b. In each jurisdiction where
2 a State's Attorney is to be appointed, the Chief
3 Justice of the Supreme Court of this state shall
4 designate one judge to chair said commission.
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6 c. The procedures, terms and membership
7 of each commission shall be as uniformly provided
8 by law except that each commission shall include
9 an equal number of representative members of a
10 bar association, laymen and persons professionally
11 involved in the correctional or rehabilitation
12 system of this state, none of whom shall hold any
13 elective position in this state.
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15 d. The Governor shall appoint the
16 State's Attorney from those recommended by the
17 said commission.
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University of Maryland Library
College Park, Md

MEMO TO ACCOMPANY DELEGATE PROPOSAL -217
By Delegate John Carroll Byrnes

The office of State's Attorney is established by Art. V Sec. 7 of the constitution:

"There shall be an Attorney for the State in each county, and the City of Baltimore, to be styled 'The State's Attorney', who shall be elected by the voters thereof, respectively, on the Tuesday next after the first Monday of November, in the year nineteen hundred and fifty-eight, and on the same day every fourth year thereafter; and shall hold his office for four years from the first Monday in January next ensuing his election, and until his successor shall be elected and qualified; and shall be re-eligible thereto, and be subject to removal therefrom, for incompetency, willful neglect of duty, or misdemeanors in office, on conviction in a Court of Law, or by a vote of two-thirds of the Senate, on the recommendation of the Attorney General"(1955, ch. 99. ratified Nov. 6, 1956).

Art V, Section 8 concerns itself with the election process.

Art V, Sec. 9 provides: "The State's Attorney shall perform such duties and receive such salary as shall be prescribed by law." And Authorize the appointment of a Deputy and assistants for Baltimore City and their salaries and the Baltimore City contribution responsibility.

Art V, Sec. 10 requires that the State's Attorney have been admitted to the practice of Law in the State and a two year resident of his jurisdiction.

Art V, Sec. 11 provides that the resident Judge or Judges fill vacancies for the residue of the term.

The State's Attorney is responsible for prosecuting persons accused of committing over four hundred different crimes in over a hundred different fields. He is intimately involved in many areas of sensitive social concern, such as child abuse, destitute children and parents, professional licensees, and mental incompetents. He is responsible for prosecuting persons accused of crimes disruptive of honest and orderly commerce. He is concerned with crimes affecting society's health, moral and public security. He is responsible for thwarting the efforts of organized criminals to infiltrate our government and pervert our judiciary. Today, no State's Attorney can say with any degree of honesty that the

police are alone responsible for the local efforts against crime. He plays a highly significant role with the police. Indeed, there is some history of exceptionally aggressive State's Attorneys rising rapidly politically as a consequence of their personal efforts in conjunction with the police to uncover and prosecute criminal elements.

Finally, despite the fact that the State's Attorney is subject to the Corrupt Practices Act he is directly and solely responsible for its enforcement.

Despite the enormity of their power and responsibility and the serious lack of voter awareness of and interest in this office, the high political and financial cost of running **AND** the radical change in the nature of the office itself, it continues as a political position. Whatever advantages there were or are in continuing this position as an elective office seem far outweighed by the extreme danger posed to the public interest by the very possibility of the corrupt or corruptible being elected by a blind electorate.

Maryland has been fortunate in the high quality of most of its State's Attorneys; but the point of this convention is to recognize changed circumstances and the need for new preventive arrangements to avoid reasonably foreseeable difficulties.

The general criteria for inclusion of matter in the new constitution should be

(1) Theoretically:

Does it express the will of the people as to the basic formula of government without frustrating the future continuing voice of their elected representatives in application of this formula to changing needs and problems?

(2) Practically:

Even if the first test is met, is it of such high emotional content that it will distract the view of the electorate from the whole text and cause polarization and possible defeat of the whole at the election for approval of a new constitution. If so, of course, it should be excluded.

Much like, in my opinion, the provisions concerning court clerks and structure, a provision deleting minor and even major offices, and provisions prescribing judicial selection, there is little or no emotional content in a prescription for the selection of State's Attorney. The people, if they react at all and in sufficient numbers, will support what this convention supports and intelligently explains so long as it isn't something that arouses some personal fear or prejudice or deeply rooted conviction.

I believe, in short, that there is no jeopardy to approval by inclusion of this provision.

I also submit that since the powers of the office so affect the life of the citizen and the course of government that it is an ingredient of any governmental formula and that, as with judges, the method of selection so permeates the conduct and quality of the office, that it is a basic ingredient of the office itself.

In light of modern political campaigning circumstances, the convention must take a much harder look at the method of selecting persons to fill sensitive positions than has ever been necessary. This convention has an obligation to adopt modern selection techniques where it is historically and indisputably clear that traditional methods offer no advantages to the public and a great number of real and potential disadvantages to them.

This proposal simply establishes the office and gives a great degree of flexibility to the legislature to provide for administration, personnel and jurisdiction in and over which the office will function. It provides that the State's Attorney will be selected by a commission formula but again gives the legislature the necessary flexibility in applying the formula.

It might be worthwhile at this point to discuss the concept of the commission selection formula. The United States Constitution is hailed as a model of brevity and it provides selection methods: election, appointment, advise and consent. There is a growing realization that:

(1) the increasing sophistication of the electorate permits greater latitude to be given chief executives and legislators and that media scrutiny of their activities is a new check on their exercise of power.

(2) the desire of the electorate to make informed judgments in elections is frustrated by the plethora of offices on the ballots. The functions of these offices they don't know and the qualifications needed for the proper exercise of the functions they cannot know.

(3) in reality, officials, other than chief executives and legislators, are no more nor less responsive to the people than appointed ones.

(4) Rather than retain the power to make blind, uninformed choices for certain strange offices, the people prefer to know that responsible persons who know the "candidates" and the needed qualifications for particular offices are representing them and making informed judgments.

The commission selection concept is a modern approach to the selection process and represents the best of all possible worlds in that the people are represented on a selecting panel and persons really capable of judging share the responsibility.

To the argument that everyone has a right to hold office and "blue ribbon panels" should not stand in the way I suggest that it is clear that not everyone has the right, only the truly qualified; and if it is clear to this convention that the electorate is simply not making informed judgments in elections and that great disadvantages result from continuing this system, it is incumbent on us to adjust the selection formula.

The commission formula is a middle ground between the undesirable obligations placed upon an elected State's Attorney as a consequence of his need for political and financial support of significant magnitude and the equally undesirable obligations resulting from direct gubernatorial appointment. It also will attract able lawyers interested in public service but less than interested in running for office.

The fact is that the office of State's Attorney is not a political position. It is not charged with representing the views of citizens. It is charged with the responsibility for prosecuting alleged offenders of laws passed and approved by the only true representatives of the people. It is as ultimately responsible to the people as is the Insurance Commissioner or Bank Commissioner and if ultimate responsibility to the people is to be our criterion for establishing elective positions, then thousands of positions should be made elective.

It is argued that election permits independence. First of all I submit that election to anything reduces independence to a significant extent. Secondly, the highest degree of independence possible would be possessed by a State's Attorney who holds his position as a result of the recommendation of a politically disinterested professionally knowledgeable panel of citizens.

Below are the salaries of State's Attorneys and the number of assistants allowed by law. Many small counties are permitted temporary assistants on a case-by-case basis.

	<u>SALARIES</u>	<u>ASSISTANTS & DEPUTIES</u>
Allegany	\$7500	1
Anne Arundel	\$13,000	6
Baltimore County	\$18,000	8
Calvert	\$7500	1
Caroline	\$4,000	
Carroll	\$8500	1
Cecil	\$7200	2
Charles	\$10,000	1
Dorchester	\$5500	1
Frederick	\$7500	1
Garrett	\$4000	
Harford	\$12,000	2
Howard	\$8,000	2
Kent	\$4,000	1
Montgomery	\$20,000	6
Prince George's	\$20,000	8
Quenn Anne's	\$4500	
St. Mary's	\$7500	1
Sumerset	\$2400	
Talbot	\$6500	
Washington	\$6500	1
Wicomico	\$8,000	1
Worcester	\$8,000	1

Constitutional Convention

DELEGATE PROPOSAL NO. 218

BY DELEGATE Bennett

September 28 , 1967.

Introduced, read the first time and referred to the Committee on
Personal Rights and Preamble

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that Article I, Section 1.11
2 dealing with unusual punishment read as follows:

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6 Excessive bail shall not be required.
7 Neither excessive fines nor cruel and unusual
8 punishment shall be provided by law or be im-
9 posed by the courts.

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11 Penal administration and the sentences of
12 the courts shall be based on the principle of
13 reformation and upon the need for protecting the
14 public.

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Constitutional Convention

DELEGATE PROPOSAL NO. 219

BY DELEGATES Kirkland, Sosnowski, Stern, Blair,
Caldwell, Pascal, Vecera, Wheatley, Key

September 28 , 1967.

Introduced, read the first time and referred to the Committee on
The Judicial Branch

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the office of the various
2 clerks of court throughout the State be re-
3 tained as an elected constitutional office.
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Constitutional Convention

DELEGATE PROPOSAL NO. 220

BY DELEGATE S BOILEAU
 KIRKLAND

September 28 , 1967.

Introduced, read the first time and referred to the Committee on

Local Government

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution shall con-
2 tain a clause on municipal government to read as
3 follows:

MUNICIPAL CORPORATIONS

4
5 Paragraph 1. Creation, Dissolution,
6 Merger, Boundary Changes. The General
7 Assembly shall provide by law for the in-
8 corporation, change, merger, dissolution
9 and alteration of boundaries of municipal
10 corporations. No existing municipal corp-
11 oration may be dissolved or have its
12 existing boundaries reduced without the
13 affirmative vote by referendum of that
14 municipal corporation's registered voters.
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17 Paragraph 2. Powers of Municipalities.
18 A municipality may exercise any power, other
19 than judicial power, or perform any function
20 which is granted to it by this Constitution,
21 by its charter or by a public general law
22 which in its terms and in its effects is
23 applicable to all municipalities or to
24 all municipalities of the municipality's
25 class, and which has not been transferred
26 exclusively to another governmental unit.

27
28 Paragraph 3. Classes of municipal corp-
29 orations, based upon population or upon other
30 criteria may be prescribed by law with not

more than four classes and not less
than five municipal corporations in any
one class.

Paragraph 4. Except as otherwise
specifically provided in this Constitution,
the General Assembly may enact only public
general laws which in their terms and their
effects apply to all municipal corporations
or all municipal corporations in a class.

Paragraph 5. Consolidation of Govern-
ments. The General Assembly may provide for
the consolidation of any or all of the
governmental and corporate functions vested
in municipal corporations with the government-
al and corporate functions vested in the
counties or other municipal corporations;
provided, such consolidation shall not
become effective until submitted to and
approved by a majority of those voting in
the municipality concerned and by a
majority of those voting in the county
concerned outside the municipal corporation.

Paragraph 6. Intergovernmental
Contracts. The State, state institutions,
any city, town, municipality or county
of this State may contract for any period
not exceeding fifty years, with each other
or with any public agency, public corporation
or authority now or hereafter created
for the use by such subdivisions or the
residents thereof of any facilities or
services of the State, state institutions,
any city, town, municipality, county,
public agency, public corporation or author-
ity, provided such contracts shall deal
with such activities and transactions as
such subdivisions are by law authorized
to undertake.

Constitutional Convention

DELEGATE PROPOSAL NO. 221

BY DELEGATE FINCH

September 28, 1967.

Introduced, read the first time and referred to the Committee on
General Provisions

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution contain a
2 provision for selection and presentation of
3 a meritorious award and recognition annually
4 to a citizen (or citizens) of the State in
5 recognition of outstanding civic, civil or
6 military services performed on behalf of
7 the State and/or the Nation.
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CONSTITUTIONAL CONVENTION OF MARYLAND

Memorandum Accompanying Delegate Proposal No. 221

By Delegate Walter G. Finch

One purpose of such an award would be to encourage more active participation by citizens of the State on matters pertaining to government and in the actual functioning of such. Another purpose would be to stimulate their interest which it is hoped would have the corollary effect of increasing their participation. Another would be that it would serve as a means by which the State could show its appreciation for outstanding services rendered by deserving members of the citizenry.

The system mentioned above would be quite similar to that which has been instituted by the federal government wherein outstanding government employees are awarded either monetary awards or certificates and the like for services outstanding, performed in behalf of the federal government.

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University of Maryland Library
College Park, Md.

University of Illinois
College Park Md

Constitutional Convention

DELEGATE PROPOSAL NO. 222

BY DELEGATE STORM

September 28, 1967.

Introduced, read the first time and referred to the Committee on
State Finance and Taxation

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that regulated public service
2 companies furnishing energy, water, sewerage,
3 communications and mass transit services shall
4 be exempt from taxation in the same manner and
5 to the same extent as co-operatives and agencies
6 of state and local governments as to their
7 income derived from furnishing public services
8 and as to their property, both real and personal,
9 used and useful in supplying such services to
10 the public, provided that as to all other
11 property and income, such public service companies
12 shall be taxed in the same manner and to the same
13 extent as other privately owned business ventures
14 are taxed by state and local governments.

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MEMORANDUM ACCOMPANYING DELEGATE PROPOSAL NO. 222

This proposal is designed to benefit users of utility services and will have little, if any, effect on the profits kept by these utilities. Under present law the Maryland Public Service Commission must reduce rates in proportion to the reduced expenses of the utilities.

Although the State would have to raise some additional monies in order to grant the proposed exemption, the amount involved would be reduced through the automatic increases in taxes from other businesses. For example, the costs of electricity supplied by a utility makes up a significant slice of the over all costs of operating any business. As costs of electricity decrease, the profits of industrial and commercial users of these services increase. The net result is a lower cost of goods and higher profits on which income tax must be paid.

Those on welfare would no longer be assessed for the support of government by way of utility bills and mass transit fares.

Industries would have new incentives for locating new plants in Maryland and the resulting boost to the state's economy would stimulate homebuilding as well as businesses. There would be less need for public funds to develop water and sewerage systems, as private capital would be encouraged to invest in such projects which could then compete on an equal basis with publicly owned plants.

The income tax burden would be distributed more equitable among the citizenry - those served by privately - owned utilities would not be obliged to pay the utilities' income tax any more than customers of towns and co-ops now pay (which is nothing).

Finally, the recognition by Maryland in its constitution of the premise that taxes on utilities place unfair burdens on the consumer (as reflected through higher bus fares, gas and electric bills, etc.) should encourage the Federal tax authorities to give Maryland and other "free enterprise" states fairer treatment by eliminating the Federal Income Taxes which most Marylanders now pay through utility bills and mass transit fares. It must be realized that consumers in some other states do not have to pay these particular Federal Income Taxes. Taxpayers with the same ability to pay could all be treated equally!

Constitutional Convention

DELEGATE PROPOSAL NO. 223

BY DELEGATE STORM

September 28 , 1967.

Introduced, read the first time and referred to the Committee on
State Finance and Taxation

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that property, the income from which
2 is subject to taxation under the Income Tax law,
3 shall not be subjected to taxation levied on
4 real and personal property.

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The following is a comparison of the taxation of certain properties in a sample county in the State of Maryland:

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*Figured on a 60% assessment and $3.50 tax rate
*****"100%      "      "      "      "
***  figured on 3% tax on individuals' income and 5% on corporation or
      on individuals' investment income.
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[illegible]

*** figured on 3% tax on individuals' income and 5% on corporation or on individuals' investment income.

Constitutional Convention

DELEGATE PROPOSAL NO. 224

BY DELEGATE WEIDEMEYER

September 28 , 1967.

Introduced, read the first time and referred to the Committee on
The Legislative Branch

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the State Senate of Maryland
2 shall be composed of 52 Senators casting a
3 total of 173 votes, each vote being determined
4 and weighted in accordance with population,
5 to the end that each county may have at least
6 one Senator casting at least one vote.

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MEMORANDUM ACCOMPANYING DELEGATE PROPOSAL NO. 224

Plan for Weighted Voting System, State Senate

By Delegate Weidemeyer

52 Senators with 173 votes

(3,100,689 population
divided by 173 equals
17,923 population per
vote)

Variation of Plus 15% equals 20,611

Variation of Minus 15% equals 15,235

<u>SUBDIVISION</u>	<u>1960 CENSUS</u>	<u>No.Sen.</u>	<u>Votes ea.Sen.</u>	<u>Total Votes</u>	<u>Population per vote</u>
Baltimore City	939,024	12	4	48	19,563
Baltimore County	492,428	7	4	28	17,587
Prince George's	357,395	5	4	20	17,870
Montgomery	340,928	5	4	20	17,046
Anne Arundel	206,634	3	4	12	17,219
Washington	91,219	2	3	6	15,203
Allegany	84,169	1	5	5	16,834
Harford	76,722	1	5	5	15,344
Frederick	71,930	1	4	4	17,982
Carroll	52,785	1	3	3	17,595
Wicomico	49,050	1	3	3	16,350
Cecil	48,408	1	3	3	16,136
St.Mary's	38,915	1	2	2	19,457
Howard	36,152	1	2	2	18,076
Charles	32,572	1	2	2	16,286
Dorchester	29,666	1	2	2	14,833
Worcester	23,733	1	1	1	23,733
Talbot	21,578	1	1	1	21,578
Garrett	20,420	1	1	1	20,420
Somerset	19,623	1	1	1	19,623
Caroline	19,462	1	1	1	19,462
Queen Anne's	16,569	1	1	1	16,569
Calvert	15,826	1	1	1	15,826
Kent	15,481	1	1	1	15,481
TOTALS:	3,100,689	52		173	

NOTE:

Prior to the requirement of the one-man one vote principle, Baltimore City and the four metropolitan counties, Baltimore, Prince George's, Montgomery and Anne Arundel contained 75.3% of the total state-wide population but had only 10 Senators out of a total of 29 or 33.8% of the representation.

Under the above weighted voting system, Baltimore City and the four metropolitan counties would have 32 Senators out of a total of 52 or 61.53% of the actual Senators and the voting strength of those Senators would total 128 votes out of a total of 172 or 73.98%.

These figures would prevail until after the 1970 Census and then the legislature could readjust the number of Senators and total number of votes for the 1974 Election.

Constitutional Convention

DELEGATE PROPOSAL NO. 225

BY DELEGATE Burgess

September 28, 1967.

Introduced, read the first time and referred to the Committee on
Personal Rights and the Preamble

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Bill of Rights of the
2 Constitution contain a provision concerning
3 personal rights as follows:

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6 No law shall be enacted to authorize any
7 agency or branch of the state government to
8 deprive or disparage the personal or property
9 rights of any individual without resort to due
10 process of law.

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Constitutional Convention

DELEGATE PROPOSAL NO. 226

BY DELEGATE ECKENRODE

September 28 , 1967.

Introduced, read the first time and referred to the Committee on
Local Government

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that Article VII, Section 7.03
2 dealing with the Establishment of Regional
3 Government shall read as follows:

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5 Upon the establishment by law of the
6 boundaries of a region, a popularly elected
7 representative government for the region, and
8 the instrument of government therefor, may be
9 created by the General Assembly by law subject
10 to confirmation by all County governments
11 wholly or partially included in the region, or
12 by the counties within or partly within the
13 region acting concurrently by law subject to
14 confirmation by the General Assembly, or by
15 affirmative action of a majority of the
16 registered voters of the region voting upon a
17 plan proposed by a petition signed by a number
18 of registered voters fo the region equal to at
19 least five per cent of the vote cast in the
20 region for governor in the most recent guber-
21 natorial election.

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Constitutional Convention

DELEGATE PROPOSAL NO. 227

BY DELEGATE FINCH

September 28 , 1967.

Introduced, read the first time and referred to the Committee on
Personal Rights and the Preamble

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution contain a
2 provision that all persons born as a result
3 of artificial insemination shall not be
4 deprived of any right of inheritance as
5 provided by law.

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CONSTITUTIONAL CONVENTION OF MARYLAND

Memorandum Accompanying Delegate Proposal #227

By Delegate Finch referred to Personal Rights and the Preamble

Artificial insemination has been practiced for hundreds of years in animals. In 1799, the first known human application took place when Dr. John Hunter of London successfully impregnated a wife with her husband's semen. A. I. (short-hand for artificial insemination) treatments are being done with increasing frequency within the United States. Because of the secrecy that surrounds the procedure, an accurate estimate of the number of A.I. babies born in the United States is unavailable, but since the first successful artificial impregnation of an American woman, in 1866, the United States leads all other countries (Israel second) with birth of 150,000 living Americans in 1964 (data: Time, February 25, 1964). "Newsweek," November 15, 1965 edition, reported that in Los Angeles there are about 250 conceptions a year brought about through artificial insemination; also, Dr. Allan C. Barnes, Chief of Obstetrics and Gynecology at Johns Hopkins Hospital, in Baltimore, Maryland, estimates that A.I.'s are carried out at Johns Hopkins at the rate of one a week (he calls A.I. "one of the best therapeutic weapons we have").

The process is classified into two types: artificial insemination of human being (A.I.H.), which involves husband and wife, both fertile, but unable to conceive; and the controversial artificial insemination by a donor (A.I.D.), where the husband is sterile.

Many medical experts believe A.I. is superior to adoption, especially when the husband is infertile, when he carries hereditary disease such as cystic fibrosis, or when husband and wife have incompatible Rh blood types which can endanger the life of their offspring. And comparing the cost, an adoption agency may charge from \$1500 to \$3000, but the average A.I. - including obstetrical care and hospital bills - may come to less than \$1000, thus giving A.I. another desirable advantage.

The first United State's law pertaining to A.I. is apparently a 1947 New York City health regulation governing the use of donors (which requires a rigid health examination of the donor).

A child produced by A.I.H. is regarded legally as the natural child of his parents. But, a child produced by A.I.D. can expect a maze of legal problems. For example,

when the child is registered for a birth certificate, the mother or one of the doctors may have to falsify the certificate to read that the husband of the mother is the father of the infant. No one has been prosecuted for "falsifying A.I.D." birth certificates, since the motivation is obviously worthy. But present lack of laws recognizing A.I.D. make the physician who performs the insemination, the husband, the wife, the child and the donor all in an unsatisfactory position with respect to the law.

Maryland must prepare to answer the questions which are rising because of the legal ramifications surrounding artificial insemination. Several states already have had to decide several cases. For instance: in Cook County, Chicago, in a 1954 divorce case where the mother asked for custody of her five-year old A.I.D. son, the judge awarded custody to the mother, but ruled that she had committed adultery and that the child was illegitimate. But in New York, in Strnad v. Strnad, 1948, the court held that a child born of donor insemination was not illegitimate. It is possible neither ruling would hold in Arizona, where a statute can be interpreted as making the donor the legal parent of an A.I.D. child, and responsible for his support. A California statute recognizes the legitimacy of A.I. children. In March, 1967, a California court tried the case of Christopher Sorensen, a product of A.I.D. In this case, after his parents divorced in 1964, the boy lived with his mother, who bitterly refused any financial aid from Mr. Sorensen. When Mrs. Sorensen became ill and applied for welfare funds, the Sonoma County district attorney charged Mr. Sorensen with violating a state law that makes willful nonsupport of a legitimate child a misdemeanor. To convict Sorensen, Municipal Court Judge James E. Jones, Jr. relied partly on the public policy that "all children born in wedlock are presumed the legitimate issue of the marital partners."

Thus, largely unsettled are these four important questions about the legal status of A.I.D. babies:

Are they legitimate?

Has the mother committed adultery in the eyes of the law?

Can the children be legally disclaimed by the father in the event of divorce?

Do the children have legal inheritance rights from the "parent"? Or from the donor?

To compound the confusion, the cases on record seem to agree that whether a husband gives his consent or not, A.I.D. children

are born illegitimate; yet the same courts manage to give the children all the rights of natural children. Uncertainty still exists whether the donor himself can be made to support a child (some state laws hold that every child is the responsibility of its "natural parents" - which in A.I.D. cases means mother and donor.).

Legal problems not only confuse the A.I. child, but the marital partners may find themselves in difficulty. If the husband of a A.I.D. mother becomes displeased with the condition of his wife and sues for divorce, contending that the A.I.D. constitutes adultery by state law, he may be estopped in his proceedings. If he consented, his wife may claim "condonation" (i.e., his forgiveness), which usually bars divorce. If he did not consent, he may still be unable to prove that A.I.D. ever took place: he does not know the donor, his wife has a right to silence, and the doctor may not be allowed to testify if she objects. As a result, the husband faces the difficult job of proving that he actually was sterile nine months before the birth of his wife's child.

What blocks the legislation needed to clear all this up is indifference - plus opposition by religious groups that artificial insemination by a donor constitutes adultery. Quoting Howard Schwab, former chairman of the American Bar Association's Family Law Section (cited in "Time", February 25, 1964) "The time has come to look at this matter in the cold light of day - to realize that something must be done to create laws that will permit this process of artificial insemination to be respectable. A.I.D. is with us and growing. We must regulate it while we still have control".

Therefore, if Maryland's legislature will not act on this issue - it may be necessary to answer these questions constitutionally.

Mayfield Pump
University of North Carolina
Chapel Hill, N.C.

Constitutional Convention

DELEGATE PROPOSAL NO. 228

BY DELEGATE FINCH

September 29 , 1967.

Introduced, read the first time and referred to the Committee on
The Legislative Branch

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution provide for
2 the appointment of a legislative committee whose
3 sole duty shall be to examine federal encroach-
4 ments on States' rights guaranteed by the United
5 States Constitution and reserved to the States,
6 and to propose such legislation as will censure
7 any of the three branches of the Federal
8 government which have presumed to enforce its
9 power against the State.

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CONSTITUTIONAL CONVENTION OF MARYLAND

Memorandum Accompanying Delegate Proposal No. 228

By Delegate Walter G. Finch, referred to The Legislative Branch

This proposal urges the Constitutional Convention to consider having a provision in the Constitution which would provide for the appointment of a legislative committee whose sole duty shall be to examine federal encroachments on States' rights guaranteed by the United States Constitution and which are reserved to the States, and to propose such legislation as will censure any of the three branches of the Federal government, that is namely, the Executive, Judicial, or Legislative branches, which have presumed to enforce its power against the State.

The relationship between the States and the Federal or Central government has been an enigma, a source of divided feelings, and a constant problem since the inception of our system in 1789. The Constitution of the United States placed certain governmental affairs under the auspices of the Federal government and certain affairs under the direction of the State governments. Thus, the powers of the national government are enumerated in Art. I, §8 and Art. II, §2 of the Constitution and then, in the tenth amendment, the powers not delegated to the Federal government nor prohibited to the States are reserved to the States (or the people). There is much room for construction in both areas - as to what is enumerated and what is reserved.

It is paramount, however, to remark that, inevitably, there are problems which arise which are local in nature and which ought to be decided locally. If the Federal government or a national electorate resolves a problem contrary to the will of the local people, there are obvious grounds for resentment and hostility. Yet, if a local problem is decided by the local electorate, then the minority of the local people who failed to carry their cause in the matter will more readily accept the dictate of the local majority. This is the nature of State or regionally oriented "American" politics - it is political realism.

Admittedly, it is difficult to obtain a consensus as to just what are "local problems" - opinions vary endlessly - but the attempt to discern these problems should not be abandoned or the really vital question "Is this problem an issue to be decided by a large national electorate via its representative or a smaller local electorate?" will be lost forever.

In order to implement the idea that the States must continually raise the question of "what is a local matter" in order that the question itself survive, a State legislative committee should be provided for, to be appointed to raise and maintain strictly local issues. Perhaps the fourteenth amendment has made due process and equal protection a matter of national concern exclusively and perhaps such matters as desegregation, school prayer, and reapportionment are conclusively national issues; but, even so, other related issues will surely arise in the future and the State must stand ready to protect its identity and preserve its integrity as it sees fit on these future issues. At the very least, the State must be a gadfly on the back of the all powerful central government. Uniformity will not be destroyed on really national matters but local values will be preserved on local issues.

Constitutional Convention

DELEGATE PROPOSAL NO. 229

BY DELEGATE FINCH

September 29 , 1967.

Introduced, read the first time and referred to the Committee on
Personal Rights and Preamble

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution contain a
2 provision that there shall not be any cruel or
3 unusual punishments for offenses, and that it
4 provide that there be capital punishment for
5 capital crimes specified by law.

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CONSTITUTIONAL CONVENTION OF MARYLAND

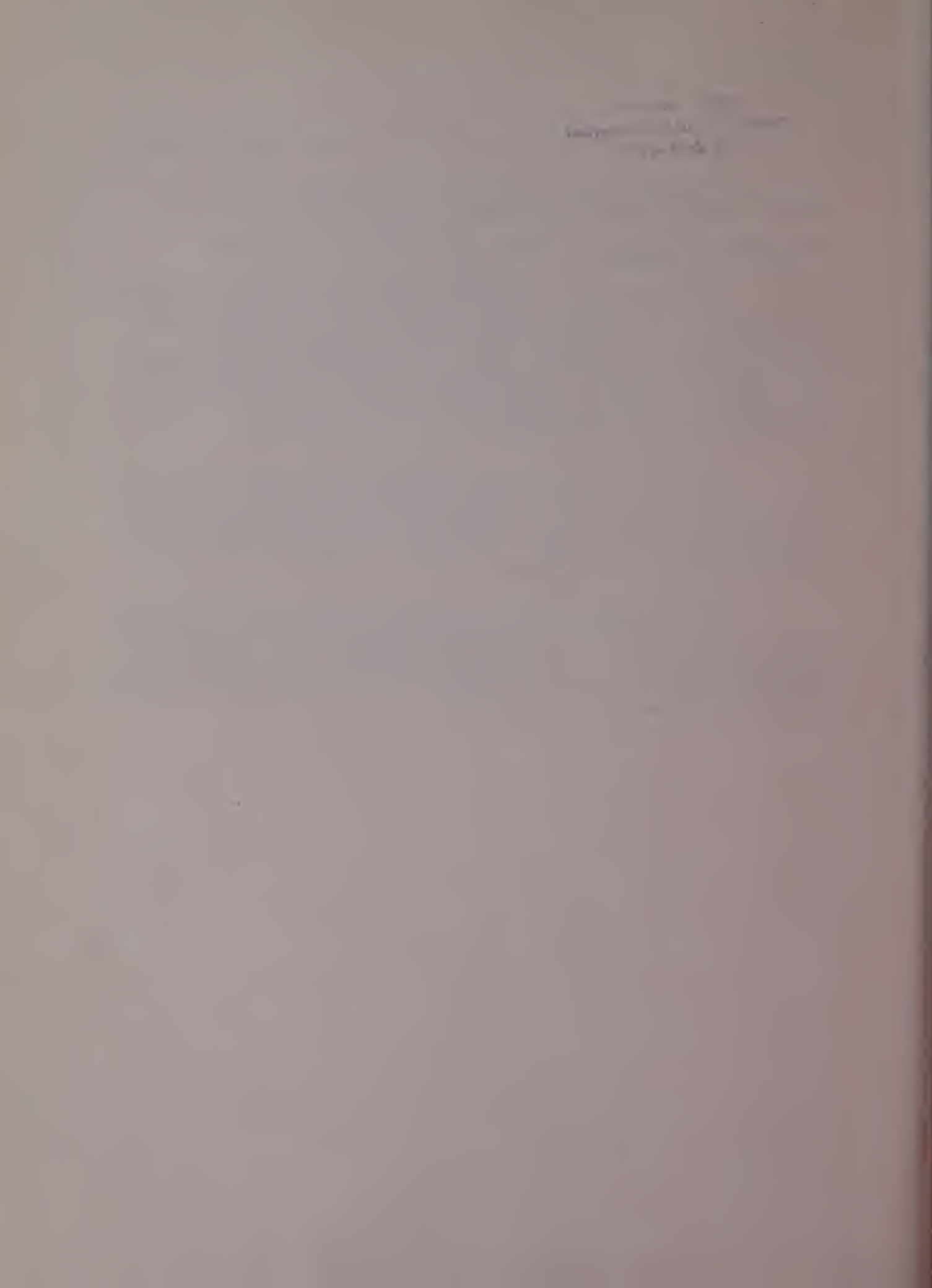
Memorandum Accompanying Delegate Proposal No. 229

By Delegate Walter G. Finch , Ref to Personal Rights
and the Preamble

This proposal relates to having in the Constitution a provision that there should not be any cruel or unusual punishments for offenses, and additionally that the Constitution provide that there will be capital punishment for capital offenses specified by law and thus leaving it up to the legislature to decide which crimes must be punished by capital punishment.

This provision in the Constitution would establish in the State Constitution that which is now spelled out in the Federal Constitution and would provide for special protection in the event that there is a change in the Federal Constitution in the future.

With respect to capital punishment, this provision would be established in the Constitution so as to allow for such punishment as it is deemed necessary for a particular capital crime. This still allows for reductions and alternatives in the sentencing process.



Constitutional Convention

DELEGATE PROPOSAL NO. 230

BY DELEGATE FINCH

September 29 , 1967.

Introduced, read the first time and referred to the Committee on
Personal Rights and the Preamble

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution contain a
2 provision that when a person is arrested on a
3 warrant charging him with a felony punishable
4 by imprisonment as specified by law, that such
5 accused shall not be required to furnish bail
6 until after a preliminary hearing, unless the
7 trial judge shall be apprehensive that the
8 accused may become a fugitive from justice; nor
9 shall such accused be subjected to photographing
10 and finger printing unless specified by the
11 trial judge and such warrant shall have been
12 signed by said trial judge.

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CONSTITUTIONAL CONVENTION OF MARYLAND

Memorandum Accompanying Delegate Proposal No. 230

By Delegate Walter G. Finch , Ref. to Personal Rights
and the Preamble

This proposal is to further protect those innocent persons who were forced to pay for bail during the process of proving their innocence.

It is felt that the Constitution should be specific in outlawing any practice of law enforcement agencies subjecting arrested persons to the indignities of being photographed and fingerprinted where such persons have no formal criminal records and while such persons are defending themselves against the State charges. The photographing and fingerprinting processes are justified upon conviction.

The exception would be where a judge of at least a circuit court level would specify the need for such photographing and fingerprinting.

For a more detailed discussion of this proposal see the Memorandum Accompanying Delegate Proposal No. 238, which this Proposal No. 230 should be considered in conjunction with.

Constitutional Convention

DELEGATE PROPOSAL NO. 231

BY DELEGATE FINCH

September 29, 1967.

Introduced, read the first time and referred to the Committee on
Local Government

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution contain a
2 provision enabling the Governor to enter into
3 formal and reciprocal compacts and agreements
4 with other States (subject to the approval of
5 the Legislature) directed to the solution of
6 problems of mutual interest, including, but
7 not limited to, public safety, air and water
8 pollution, extradition, health, education, and
9 welfare for the best interest of the public
10 good.

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C O N S T I T U T I O N A L C O N V E N T I O N O F M A R Y L A N D

Memorandum Accompanying Delegate Proposal 231

By Delegate Walter G. Finch

This proposal, as well as proposals No. 232 and 242, which should be considered in conjunction therewith, relates to the power of the State to enter into formal compacts and agreement with other states and the Federal Government to solve problems of mutual interest.

The U. S. Constitution provides that "no state shall, without the consent of Congress, enter into any power,". Under this provision, states may make such agreements and compacts as are assented to by Congress and are not in violation of Federal or the State Constitution. Such agreements as might tend to alter the political power of the states affected and thus encroach on or interfere with the supremacy of the United States, require Congressional approval.

This constitutional provision is broad enough to prohibit every state compact or agreement without the consent of Congress.

Under the ordinary rules of constitutional construction, it is to be confined to those objects and purposes for which the provision was framed, as revealed by reference to the context of the instrument and of the provisions with which it is associated. So construed, the provision does not apply to other possible agreement or compact between states, but only to such as might tend to alter the political power of the states affected and thus encroach on or interfere with the supremacy of the United States; that is, the provision refers only to political compacts, alliances, and treaties. Agreements incapable of operating thus, may be made by states without the consent of Congress.

Subject to the rule that the constitutional provision as to compacts between states grants no power to enter into compacts violating the Federal or State Constitutions and the rule that it is not necessary or permissible to limit or surrender, by such compact the sovereign rights of the people, the state may enter into any agreement that it sees fit. A compact may be entered into for the purpose of settling a controversy between the states without regard to whether it constitutes a judicial or quasi-judicial decision on the controverted rights, since resort to a judicial remedy

is never essential to the adjustment of controversies between states unless the states are able to agree on the terms of the compact, or Congress refuses consent.

An inter-state compact may not be in any manner amended, altered, or modified without the consent of all the parties to the contract. An amendment of a compact is a matter for all the contracting states subject to Congressional consent and not a matter for act of Congress. The state which is a party to a compact with another state may legislate with respect to matters covered by the compact as long as such legislative action is in approbation and not in reprobation of the compact. Such action ordinarily does not require the concurrence of the other state to the compact. Congressional assent is not necessary to every step taken by a state in an effort to carry out a duly approved compact with another state. By virtue of its power to give or refuse assent, Congress has authority to enforce by appropriate legislation the terms of any inter-state compact to which it has assented.

Generally, contracts between states are made by the acts of their respective Legislatures and a compact may consist of an informal agreement, by co-operative or identical actions to undertake certain actions. The consent of Congress to an agreement between the states may be given after as well as before the making of an agreement and need not be formally expressed.

In contracts between states made by the acts of their respective Legislatures, no technical terms need be used. Any terms are sufficient which would give rise to a contract between a state and an individual. So, a compact may consist of an informal agreement, by co-operative or identical actions to undertake certain actions. If the assent of a state to a part of the agreement is conditioned on the happening of certain acts, after their occurrence, those terms become an operative part of the agreement in like manner as those not so conditioned. Under a statute providing for reciprocal agreements with adjoining states as to certain matters, such a reciprocal agreement may not be entered into where there is no authority in the adjoining states competent to enter into the agreement.

The concern of Congress to an agreement between states may be given after as well as before the making of the agreement. It need not be formally expressed. It is sufficient that Congress has

signified its consent thereto by some positive act with relation to the agreement or by the adoption or approval of proceedings taken under it. It need not be given by a formal act, but may be given by resolution. Where the assent of Congress is in the form of permission to contract, given prior to the agreement, the compact is operative at once after the adoption of legislation by both states embodying their agreement.

It has long been held that a statute may authorize an administrative official of a state to enter into reciprocal agreements with the authorities of another state with respect to certain matters. Such an agreement made pursuant thereto is valid if it does not conflict with the laws of the state.

A statute may create an administrative body to act with other like bodies of other states to plan and recommend uniform statutes and practices on governmental matters of common interest to the states. It is pointed out that a compact made by two states in a manner permitted or prescribed by the Federal Constitution is a law or, in legal effect, a contract binding on all of the parties thereto, the obligation of which continue as long as the contract exists. Its provisions limit the agreeing states in the exercise of their respective powers and are binding on the citizens of both states.

The general rules of construction apply in the interpretation of the meaning of an agreement between states.

A compact or agreement made by two states in the manner permitted or prescribed by the Federal Constitution is law. Although a compact is not a "treaty" within the constitutional sense, so as to be superior to any state law, its provisions limit the agreeing states in the exercise of their respective powers and are binding on the citizens of both states and on the judicial, as well as the executive branch of the state government, although the validity and interpretation of a compact have been held matters of judicial construction.

It is to be further pointed out that it is a contract within the constitutional prohibition of the impairment of the application of the contract. However, if the compact is a limit on the power of the state to authorize and not inhibition on their power to restrict, subsequent restrictive legislation is not repugnant to the compact. Generally, when the state and federal government have given

their assent to the compact, no other power may object to the agreement reach. The granting of a required Congressional consent does not serve to make a compact between states a law of the United States.

In view of the above, it is felt that the constitution should contain a provision authorizing the state to enter into formal and reciprocal compacts and agreements with other states and the Federal Government in the solution of problems of mutual interest including, but not limited to, public safety, air and water pollution, extradition, health, education, welfare, conservation of natural resources, wasting assets and prevention of erosion of land for the best interests of the public good. (U. S. Constitution, 1954, Government Printing Office and Corpus Juris Secundum).

Constitutional Convention

DELEGATE PROPOSAL NO. 232

BY DELEGATE FINCH

September 29, 1967.

Introduced, read the first time and referred to the Committee on
Local Government

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution contain a
2 provision authorizing the Governor (or
3 Legislature) to enter into agreements and
4 understandings with the Federal government,
5 as well as the governments of other states,
6 in order to conserve natural resources,
7 including various types of wasting assets
8 and, to prevent erosion of land.

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C O N S T I T U T I O N A L C O N V E N T I O N O F M A R Y L A N D

Memorandum Accompanying Delegate Proposal No. 232

By Delegate Walter G. Finch, referred to Local Government

This proposal urges that there be a Constitutional provision empowering the Governor to enter into formal agreements and compacts with the Federal government, as well as with the governments of other states, in order to conserve natural resources, including wasting assets (such as game and animal life, gas, oil, minerals, etc.) and to minimize the erosion of land due to action of intra-state and interstate waters, by repeated uses, and by nature.

This proposal should be considered with Proposals numbered 231 and 242.

The U. S. Constitution provides that "no state shall, without the consent of Congress,....enter into any agreement or compact with another State." Under this provision, states may make such agreements and compacts as are assented to by Congress and are not in violation of Federal or the State Constitution. Such agreements as might tend to alter the political power of the states affected and thus encroach on or interfere with the supremacy of the United States, require Congressional approval.

This constitutional provision is broad enough to prohibit every state compact or agreement without the consent of Congress.

Under the ordinary rules of constitutional construction, it is to be confined to those objects and purposes for which the provision was framed, as revealed by reference to the context of the instrument and of provisions with which it is associated. So construed, the provision does not apply to other possible agreement or compact between states, but only to such as might tend to alter the political power of the states affected and thus encroach on or interfere with the supremacy of the United States; that is, the provision refers only to political compacts, alliances, and treaties. Agreements incapable of operating thus, may be made by states without the consent of Congress.

Subject to the rule that the constitutional provision as to compacts between states grants no power to enter into compacts violating the Federal or State Constitutions and the rule that it is not necessary or permissible to limit or surrender, by such compact the sovereign rights of the people, the state may enter into any agreement that it sees fit. A compact may be entered into for the purpose of settling a controversy

between the states without regard to whether it constitutes a judicial or quasi-judicial decision on the controverted rights, since resort to a judicial remedy is never essential to the adjustment of controversies between states unless the states are able to agree on the terms of the compact, or Congress refuses consent.

An inter-state compact may not be in any manner amended, altered, or modified without the consent of all parties to the contract. An amendment of a compact is a matter for all the contracting states subject to Congressional consent and not a matter for act of Congress. The state which is a party to a compact with another state may legislate with respect to matters covered by the compact as long as such legislative action is in approbation and not in reprobation of the compact. Such action ordinarily does not require the concurrence of the other state to the compact. Congressional assent is not necessary to every step taken by a state in an effort to carry out a duly approved compact with another state. By virtue of its power to give or refuse assent, Congress has authority to enforce by appropriate legislation the terms of any inter-state compact to which it has assented.

Generally, contracts between states are made by the acts of their respective Legislatures and a compact may consist of an informal agreement, by co-operative or identical actions to undertake certain actions. The consent of Congress to an agreement between the states may be given after as well as before the making of an agreement and need not be formally expressed.

In contracts between states made by the acts of their respective Legislatures, no technical terms need be used. Any terms are sufficient which would give rise to a contract between a state and an individual. So, a compact may consist of an informal agreement, by co-operative or identical actions to undertake certain actions. If the assent of a state to a part of the agreement is conditioned on the happening of certain acts, after their occurrence, those terms become an operative part of the agreement in like manner as those not so conditioned. Under a statute providing for reciprocal agreements with adjoining states as to certain matters, such a reciprocal agreement may not be entered into where there is no authority in the adjoining states competent to enter into the agreement.

The concern of Congress to an agreement between states may be given after as well as before the making of the agreement. It need not be formally expressed. It is sufficient that Congress has

signified its consent thereto by some positive act with relation to the agreement or by the adoption or approval of proceedings taken under it. It need not be given by a formal act, but may be given by resolution. Where the assent of Congress is in the form of permission to contract, given prior to the agreement, the compact is operative at once after the adoption of legislation by both states embodying their agreement.

It has long been held that a statute may authorize an administrative official of a state to enter into reciprocal agreements with the authorities of another state with respect to certain matters. Such an agreement made pursuant thereto is valid if it does not conflict with the laws of the state.

A statute may create an administrative body to act with other like bodies of other states to plan and recommend uniform statutes and practices on governmental matters of common interest to the states. It is pointed out that a compact made by two states in a manner permitted or prescribed by the Federal Constitution is a law or, in legal effect, a contract binding on all of the parties thereto, the obligation of which continues as long as the contract exists. Its provisions limit the agreeing states in the exercise of their respective powers and are binding on the citizens of both states.

The general rules of construction apply in the interpretation of the meaning of an agreement between states.

A compact or agreement made by two states in the manner permitted or prescribed by the Federal Constitution is law. Although a compact is not a "treaty" within the constitutional sense, so as to be superior to any state law, its provisions limit the agreeing states in the exercise of their respective powers and are binding on the citizens of both states and on the judicial, as well as the executive branch of the state government, although the validity and interpretation of a compact have been held matters of judicial construction.

It is to be further pointed out that it is a contract within the constitutional prohibition of the impairment of the application of the contract. However, if the compact is a limit on the power of the state to authorize and not an inhibition on their power to restrict, subsequent restrictive legislation is not repugnant to the compact. Generally, when the state and federal government have given

their assent to the compact, no other power may object to the agreement reached. The granting of a required Congressional consent does not serve to make a compact between states a law of the United States.

Land Room
Maryland Library
State Park, Md.

In view of the above, it is felt that the constitution should contain a provision authorizing the state to enter into formal, and written reciprocal compacts and agreements with other states and the Federal Government in the solution of problems of mutual interest including, but not limited to, erosion of land due to natural environment, such as by interstate and intrastate waters, etc, and to conserve wasting assets, such as minerals, gas, oil, etc. (U.S. Constitution, 1954, Government Printing Office and Corpus Juris Secundum).

Constitutional Convention

DELEGATE PROPOSAL NO. 233

BY DELEGATE FINCH

September 29 , 1967.

Introduced, read the first time and referred to the Committee on
The Executive Branch

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution contain a
2 provision giving the Governor the power to com-
3 mute the death sentence for a capital offense.

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C O N S T I T U T I O N A L C O N V E N T I O N O F M A R Y L A N D

Memorandum Accompanying Delegate Proposal No. 233

By Delegate Walter G. Finch ref. The Executive Branch.

This proposal urges that the Convention consider containing a provision in the new Constitution giving the Governor the power to commute the death sentence for a capital offense.

An excellent article favoring retention of capital punishment is set forth in 54 Ky. L.J. 742 (1966) where 13 valid reasons are given for retaining capital punishment. These reasons are to be considered in addition to the ones set forth below in connection with the Governor having power to commute the death sentence for a capital offense.

It is often stated that the death penalty should be abolished completely or that capital punishment should be eliminated except in certain, specific instances. One prominent rationale usually set forth in support of this argument is that capital punishment is not a deterrent against crime. Along with this, it is generally inferred or stated that the need for capital punishment is based on a "deep rooted human sense of retribution."

It is the premise of this proposal that the capital punishment is a necessary instrument in the array of tools which the state has at its disposal to combat the incidents of crime which daily threaten the lives and well being of its citizens. It is the further position of this proposal, then, that the two above mentioned arguments most often used to urge abolition of the death penalty are incorrect, inaccurate, and misleading.

The question of whether or not the threat of capital punishment acts as a deterrent to many types of serious crimes is difficult to answer in terms of statistics even though statistics are often used on both sides. Certainly, it is impossible for statisticians to reach into the mind of an individual and measure whether or not he is deterred from a serious crime by the very thought of the awesome finality of the death penalty.

Likewise, the statisticians cannot tell us how many crimes have been prevented or avoided in the past due to the somber thought of the death penalty or how many serious crimes will be thwarted in the future by that same spectre. They can measure the incidence of crimes committed in a given area in a given time but whether they can isolate every other factor out of the environment and then relate a lower incidence of crime or a parallel incidence of crime to the proposition

that, because the death penalty has been abolished and crime has not increased markedly, therefore the death penalty is not a deterrent - this is quite another question!

Common sense might tell us that the thought of the death penalty does not deter crimes of passion; common sense might tell us also that a man will think long and hard before he undertakes premeditated murder if he knows that such act will cost him his life in return. If one is thinking about the latter course of action, then let him have an added weight to throw on the scales against the commission of the heinous crime.

It is said that the death penalty is only a manifestation of revenge or retribution. Actually, it is not so much revenge as it is protection that concerns the state and the people and motivates the maintainance of the death penalty.

If Joe Jones kills Sam Smith and Bill Jackson, living 3000 miles away, reads about the case, Bill Jackson is concerned - not so much because he has personal regard for Sam Smith and wants revenge but because he is concerned about what will happen to Bill Jackson if Joe Jones ever gets free and takes a liking to travel.

The people respect the law because the law protects the citizen, his family, and his property. If the law cannot deter and prevent serious bodily crimes; then the people will no longer respect or obey the law. If a man escapes from prison and breaks into a farmhouse and rapes and kills the women of the family and is convicted of same, then who would respect the state, or the law that cannot insure that this man will never be afoot to kill and rape again.

The point is that the death penalty is only one tool in the arsenal of justice which the state uses to maintain order and protect its citizens - as a tool, its usefulness is often debated. Thus, its usage is most often restricted to very outrageous cases where guilt is very clearly established. It is still a tool that can be used however. If it is abolished, then the state has lost completely a tool which it has used since the founding of this Country to protect its people and assure them that a certain individual will no longer menace society. Who could ever say, with complete confidence of his accuracy, that capital punishment has not deterred men from serious crimes against their neighbors, for who can measure uncommitted crimes? Better to keep the tool and use it as wisely as possible than to discard it and never be able to use it at all.

With this thought in view, that capital punishment be retained as a possible instrument for deterring serious crimes and securing the safety of the people against instigators and perpetrators of intolerable crimes, this proposal envisions yet another "check" on the usage of capital punishment, another assurance that the death penalty will be applied with great discretion. It foresees the Governor, the political chieftan of state and a man most sensitive to the will of the people, as a final barrier between a condemned man and the death penalty.

Thus, if capital punishment is ordered in a certain case because a Judge feels the crime is outrageous to the conscience, that the individual is clearly guilty, and that the convicted person is a grave menace to society if he should ever walk freely in society again; then, the Governor is given the power to intercede on behalf of the people whom he represents and say, in effect, the people are not outraged at the crime or convinced of the guilt; and the convicted man's death sentence is then commuted. The Governor is in a uniquely sensitive political office within the state, and he is responsive to the attitude of the public as a politician of his high order must be - it is fitting and proper then that he have the power to alter the sentence of the lone Judge or a panel of Judges on behalf of the people.

Manuscript
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College Park Md

Constitutional Convention

DELEGATE PROPOSAL NO. 234

BY DELEGATE SHERBOW

September 29 , 1967.

Introduced, read the first time and referred to the Committee on
The Legislative Branch

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the new Constitution include
2 the provisions of Article III, Section 48 of the
3 present Constitution dealing with corporations,
4 and which presently reads as follows:

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8 Corporations may be formed under general
9 laws, but shall not be created by Special Act,
10 except for municipal purposes and except in
11 cases where no general laws exist, providing
12 for the creation of corporations of the same
13 general character, as the corporation proposed
14 to be created; and any act of incorporation
15 passed in violation of this section shall be
16 void. All charters granted, or adopted in
17 pursuance of this section, and all charters
18 heretofore granted and created, subject to re-
19 peal or modification, may be altered, from
20 time to time, or be repealed; Provided, nothing
21 herein contained shall be construed to extend
22 to Banks, or the incorporation thereof. The
23 General Assembly shall not alter or amend the
24 charter, of any corporation existing at the
25 time of the adoption of this Article, or pass
26 any other general or special law for the bene-
27 fit of such corporation, except upon the condi-
28 tion that such corporation shall surrender all
29 claim to exemption from taxation or from the
30 repeal or modification of its charter, and

1that such corporation shall thereafter hold its
2charter subject to the provisions of this Cons-
3titution; and any corporation chartered by this
4State which shall accept, use, enjoy or in any
5wise avail itself of any rights, privileges,
6or advantages that may hereafter be granted or
7conferred by any general or special Act, shall
8be conclusively presumed to have thereby sur-
9rendered any exemption from taxation to which
10it may be entitled under its charter, and shall
11be thereafter subject to taxation as if no such
12exemption has been granted by its charter.

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MEMORANDUM IN EXPLANATION OF PROPOSAL NO. 234, Delegate Sherbow

Article III, Section 48 of the present Constitution stems from the Constitution of 1851 and was designed originally to limit the effect of the decision of the U. S. Supreme Court in Dartmouth College vs Woodward. In that case it was held that a corporate charter was a contract which the State had no right to change or impair. As a result, all the States adopted constitutional provisions making subsequent corporate charters subject to repeal or modification. This was the original purpose of Article III, Section 48 and, although changing conditions have reduced its importance, it still serves that purpose.

In addition, special provisions have been engrafted on this Section for the purpose of limiting the effect of tax exemptions contained in corporate charters granted prior to 1851. These provisions are highly technical and there has been litigation on the subject. It would be dangerous to delete or change them without thorough study, especially as one of the largest railroads in the State still operates under a charter granting it a tax exemption.

It seems unfortunate to retain a provision which is so complicated and hard to understand. Some simplification may be possible, but it would be safer to tolerate the technicalities than to run the risks that could be involved in any oversight or inadvertant change in legal meaning.

Maryland Power
University of Maryland Library
College Park, Md.

Constitutional Convention

DELEGATE PROPOSAL NO. 235

BY DELEGATE GILL

September 29 , 1967.

Introduced, read the first time and referred to the Committee on
The Legislative Branch

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that Senators shall run at large
2 throughout their legislative districts, but
3 that legislative districts with more than one
4 delegate shall be subdivided so that each
5 delegate represents only one equal portion
6 of the district.
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Constitutional Convention

DELEGATE PROPOSAL NO. 236

BY DELEGATES DUKES AND STERN

September 29, 1967.

Introduced, read the first time and referred to the Committee on
The Judicial Branch

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL to incorporate the Maryland Tax
2 Court into the uniform court system under the
3 Judiciary Article as a Constitutional Court.

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Constitutional Convention

DELEGATE PROPOSAL NO. 237

BY DELEGATE STORM

September 29, 1967.

Introduced, read the first time and referred to the Committee on
General Provisions

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that there shall be included in the
2 Constitution a provision reserving to the State
3 Jurisdiction over federal enclaves, to read as
4 follows:

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9 The State of Maryland hereby reserves as to
10 all lands within the State heretofore or here-
11 after aquired by the United States or any agency
12 thereof, whether by purchase, lease, condemnation
13 or otherwise, and as to all property, persons
14 and transactions on any such lands, jurisdiction
15 and authority to the fullest extent permitted by
16 the Constitution of the United States and not
17 inconsistent with the governmental uses,
18 purposes, and functions for which the land was
19 acquired or is used.

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MEMORANDUM ACCOMPANYING DELEGATE PROPOSAL NO. 237

In Article 96 of the Annotated Code of Maryland (dealing with acquisition of and jurisdiction over land and buildings by the United States) the State retains concurrent jurisdiction with the United States in and over tracts of land acquired by the federal government for various uses. Generally such jurisdiction is retained so that civil and criminal processes, issued under the authority of the State, may be executed in the same manner as if jurisdiction had not been ceded to the United States.

The purpose of this proposal is to reserve to the State such concurrent jurisdiction over all civil and criminal matters as is not inconsistent or in conflict with the federal government's exercise of the jurisdiction which was ceded to it by the State. In addition, it is desired that such reserved concurrent jurisdiction be uniform throughout the State to eliminate the possibility of local prejudice regarding some Federal enclaves. The rights and obligations of residents of such federal enclaves should be uniform, regardless of the enclaves location in the State.

Residents of such federal enclaves should be subject to Maryland law and at the same time be able to avail themselves of its protection and benefits.

By Delegate Storm

May 1968
University of Maryland Library
College Park, Md.

Constitutional Convention

DELEGATE PROPOSAL NO. 238

BY DELEGATE FINCH

September 29, 1967.

Introduced, read the first time and referred to the Committee on
Personal Rights and the Preamble

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution contain a
2 provision that no person accused of a crime
3 shall be required to post cash, property or
4 surety bonds to ensure his freedom prior to
5 trial unless the trial judge is apprehensive
6 that the accused will become a fugitive from
7 justice.

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CONSTITUTIONAL CONVENTION OF MARYLAND

Memorandum Accompanying Delegate Proposal No. 238

By Delegate Walter G. Finch, Ref. to Personal Rights
and the Preamble

This proposal should be considered with
Delegate Proposal No. 230.

This proposal would eliminate the entire bail bond system in the State of Maryland in those cases concerning crimes against the State. In a real sense, it is the current practice to punish many innocent persons, financially, during the course of their defense. Where the trial judge believes that the accused would become a fugitive from justice, a financial security requirement for the personal appearance of the accused could be established through the prosecutor's office.

There has, in recent years, been a re-examination of the right-to-bail provisions of the Eighth Amendment. An archaic process with roots deep in history, bail has become a barnacle on the back of the criminal law.

Theoretically, it is to be pointed out, that the defendant out on bail is in the custody of his bondsman. Thus, the bondsman is allowed to charge a modest fee, varying from six to ten per cent of the bond for the service he renders and the risk he runs. Actually, a defendant on bond is in the custody of no one and the police and the FBI are much more familiar with his whereabouts than his bondsman.

If the defendant should fail to appear for trial, it is the FBI or the police who usually pick him up, yet the bondsman gets the financial reward. In short, the bondsman gets paid for rendering no real legal service to society. Quite often, this spells trouble. As has been noted in recent years, the bonding business has been the source of scandal.

It is to be noted that there are laws that make it a criminal offense for a defendant to fail to appear in court. Sometimes, the penalty for violation is much more severe than for the crime for which the individual was originally charged with. The defendant who absconds from a hearing would certainly be more impressed with a prison sentence for failure to appear than he would be with forfeiture of his bond. If the

threat of prosecution for non-appearance of the defendant is deemed ineffectual, then the threat of bail forfeiture certainly will not ensure that the defendant will be present at his trial of the crime.

It is also to be noted that the requirement of bail can also work great injustice for those unable to pay the fee of the bondsman. Quite often, the poor remain in jail, with the result that they cannot support their families and dependents. In addition, they have difficulty in finding their witnesses and obtaining assistance in the preparation of their defense.

It is known from statistics limited to first offenders, in fifty-nine per cent of those unable to make bail are found guilty and they are sentenced to jail terms for a particular crime. On the other hand, it has been determined from statistics, that approximately ten per cent of those on bond are found guilty and receive jail terms.

Thus, the current proposal would ensure that the current practice of furnishing bail by persons financially unable to do so, would be eliminated.

For additional information on this subject matter, see "Bail and Summons: 1965" Proceedings of the Institute on Pretrial Release Projects, New York City, N. Y., October, 1965 and "Proceedings: Justice Conference on Bail and Remands in Custody" London, November, 1965, published under the auspices of The National Conference on Bail and Criminal Justice, co-sponsored by The United States Department of Justice, Washington, D. C. and the Vera Foundation, Inc. of 30 E. 39th Street, New York, N.Y. under a Demonstration Grant from the Office of Juvenile Delinquency and Youth Development, Welfare Administration, U. S. Department of Health, Education, and Welfare in cooperation with the President's Committee on Juvenile Delinquency and Youth Crime; "Bail Reform in the Nation's Capitol", final report on the D. C. Bail Project by Richard R. Morreul, Director and the Staff of the D. C. Bail Project, published by the Georgetown University Law Center, Washington, D. C., 1966; and "Criminal Law and the Bill of Rights" by J. Skelly Wright, June 3, 1965, The Reporter, pages 23-25.

Constitutional Convention

DELEGATE PROPOSAL NO. 239

BY DELEGATE GALLAGHER AT THE REQUEST OF THE
COMMITTEE ON THE LEGISLATIVE BRANCH

September 29, 1967.

Introduced, read the first time and referred to the Committee on
The Legislative Branch

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that Article III, Section 3.12 of
2 the Constitution provide that the leadership
3 of the Senate and House of Delegates be em-
4 powered to call special sessions of the General
5 Assembly, and that the Constitution provide
6 for split sessions of the General Assembly for
7 budget purposes, to read as follows:

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11 The General Assembly shall convene in regular
12 session on the third Wednesday of January of each
13 year, unless otherwise prescribed by law, and may
14 continue in session for a period not longer than
15 ninety days; provided, however, that by a majority
16 vote of each house a session may be split into two
17 parts for the purpose of considering the budget.

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19 The Governor may convene a special session of
20 the General Assembly at any time. The Speaker of
21 the House of Delegates and the President of the
22 Senate, acting concurrently, may convene a special
23 session of the General Assembly at any time and
24 must convene a special session upon the written
25 request of three-fifths of all the members of
26 each house. A special session may continue for a
27 period not longer than 30 days.

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MEMORANDUM ACCOMPANYING DELEGATE PROPOSAL NO. 239

The Eagleton Institute of Practical Politics at Rutgers University, New Brunswick, New Jersey, has released to the Committee on the Legislative Branch its recommendations for Constitutional changes involving the Maryland General Assembly. These Constitutional recommendations represent only a small portion of a much larger study on all aspects of the Maryland General Assembly to be released by the Eagleton Institute at an unspecified future date.

This proposal embodies the major Eagleton recommendations concerning limiting the legislative session to 90 days, permitting the leadership of the two houses to call special sessions of the General Assembly, limiting special sessions of the General Assembly to 30 days, and providing for split sessions for purposes of considering the budget.

My dear Mr. Garrison

I have just received your letter of the 10th inst. and am glad to hear that you are so interested in the cause of the colored people. I have been thinking much of late about the position of the colored man in our country, and how we can best help him to attain his rights. I believe that the only way to do this is by the use of the moral force of the truth, and by the aid of the law of God. I am sure that you will agree with me in this.

I am, dear sir, very respectfully,
Your obedient servant,
Wm. Lloyd Garrison

Constitutional Convention

DELEGATE PROPOSAL NO. 240

BY DELEGATE FINCH

September 29 , 1967.

Introduced, read the first time and referred to the Committee on
The Executive Branch.

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution contain a
2 provision that the Governor have a Cabinet of
3 not more than twenty-five (25) departments to
4 be determined by the Legislature for coordina-
5 ting the various functions of the executive
6 branch of government, including, but not limited
7 to the following: Agriculture, Banking, Commerce,
8 Education, Health, Insurance, Labor, Legal,
9 Natural Resources, Military, Public Safety,
10 Public Services, Science and Technology, Secre-
11 tary of State, Transportation, Treasury, and
12 Welfare: with the heads of such departments
13 to be known as Secretaries who are appointed
14 by the Governor and confirmed by the Senate;
15 and further, with functions of the executive
16 branch being allocated to the departments
17 indicated.

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C O N S T I T U T I O N A L C O N V E N T I O N O F M A R Y L A N D

Memorandum Accompanying Delegate Proposal No. 240

By Delegate Walter G. Finch

Referred to: Committee on the Executive Branch

Archives of Maryland Library
College Park, Md.

This proposal urges that the Constitution contain a provision the Governor shall have a Cabinet of not more than twenty-five (25) principal departments to be determined by the Legislature for coordinating the various functions of the executive branch of government, including, but not limited to the following: Agriculture, Banking, Commerce, Education, Health, Insurance, Labor, Legal, Natural Resources, Military, Public Safety, Public Services, Science and Technology, Secretary of State, Transportation, Treasury, and Welfare. The proposal further urges that the heads of such departments would be known as Secretaries who would be appointed by the Governor and confirmed by the Senate. In addition, all functions, duties, and responsibilities of the executive branch would be reallocated to the departments indicated.

This proposal, in essence, would require all of the duties, functions, and responsibilities of approximately 250 agencies now located in the executive branch, to be reallocated and redistributed to approximately 16 to 18 principal departments with the possibility that there might be a maximum of 25 principal departments in the future with such departments being determined by the Legislature. Under this proposal, the General Assembly, would by law, prescribe the functions, powers, duties of all agencies of the executive branch and would by law, assign all such agencies to the principal departments mentioned. Under this proposal, the General Assembly, by law, could designate as head of each principal department of the executive branch, either a single executive or in some cases, a board or commission, such as would be required in the State Board of Education.

Such an arrangement, as mentioned above, would be similar to that of the Federal Government, wherein the President of the United States has a Cabinet composed of ten or eleven principal departments, with the heads of the departments being Secretaries, such as the Secretary of Defense.

By such an arrangement, the Governor would have a Cabinet which he could confer with weekly or periodically as the situation demands and it is felt that he could better coordinate and operate the executive branch of government.

The general trend of state governments as indicated by the Governors' message in the journal entitled "State Government" Spring, 1967, on pages 74 and 75, is as follows: "The Governor of Maine state his intention to develop a 'cabinet' of state department heads, with subcommittees based on natural divisions of responsibilities among human resources, economic and natural resources, and government administration. He also intended to appoint a series of task forces to deal with specific problems, including government organization. The Governor further suggested abolishing the Executive Council, which he considered archaic, and establishing an office of Lieutenant Governor."

"The Governor of Minnesota underscored urgent need for streamlining and improving all three branches of government. He proposed creation of a major study committee to prepare a detailed proposal for reorganizing state government 'to fit the computer age.' Reduction of the number of executive departments would be one objective."

The general trend, from a study of the article entitled "Trends of State Government in 1967" as indicated by the Governors' message, is to reorganize the various agencies, instrumentalities, and units of the executive branch of government into a small number of principal departments. This is particularly true as evidenced in the new State Constitution of Alaska wherein all units of government in the executive branch have been confined to 20 principal departments and it is the purpose of this proposal to urge that the same be done in the State of Maryland.

Maryland Room
University of Maryland Library
College Park, Md

Constitutional Convention

DELEGATE PROPOSAL NO. 241

BY DELEGATE FINCH

September 29 1967.

Introduced, read the first time and referred to the Committee on
General Provisions.

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution contain a
2 provision establishing a free, efficient, and
3 economical public education system operated on a
4 continuous twelve month basis, with suitable
5 vacation periods for educators and students
6 being scheduled throughout the school year in
7 order to make maximum and efficient use of
8 public facilities.

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CONSTITUTIONAL CONVENTION OF MARYLAND

Memorandum Accompanying Delegate Proposal No. 241

By Delegate Walter G. Finch

This proposal calls for the constitution to have a provision which would establish a free, efficient, and economical public education system operated on a continuous twelve month basis, with suitable vacation periods for educators and students being scheduled throughout the school year in order to make maximum and efficient use of public facilities.

As stated within the body of the proposal itself, one of its main purposes is the idea of making maximum and efficient use of public facilities. This would also have the probable effect of alleviating the overcrowded condition which exists in many of our schools today, decreasing the cost of vandalism which rises during the summer months when our schools sit idle and also eliminate the idleness with its attendant boredom, discontent, etc. which plagues much of our youth today during the summer months.

The idea of such public facilities sitting idle for a period of approximately three months each year seems ridiculous in an era when the demand for education and its related facets is imposing a growing burden on the available facilities.

The use of such facilities should be further encouraged in connection with community activities such as adult education programs, civic meetings and affairs, recreation, etc.

Such a year-round system may more readily adapt itself to the overall needs of our ever expanding demand for educational and community services.

Maryland Room
University of Maryland Library
College Park, Md.

Constitutional Convention

DELEGATE PROPOSAL NO. 242

BY DELEGATE FINCH

September 29 , 1967.

Introduced, read the first time and referred to the Committee on
The Executive Branch.

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution contain a
2 provision granting the Governor, subject to the
3 approval of the Legislature, power to enter into
4 negotiations and agreements with the Federal
5 government as to various powers reserved to the
6 State.

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Memorandum Accompanying Delegate Proposal 242

By Delegate Walter G. Finch

This proposal relates generally to a study of powers reserved to the States and not usurped by the Federal Government. Such powers would include the right of a state to control and regulate its own commerce, such as intra-state commerce. Thus, this proposal should be considered together with Delegate Proposals No. 189, 231 and 232.

The U. S. Constitution provides that the powers not delegated to the United States, nor prohibited by it to the states, are reserved to the states respectively or to the people.

The tenth amendment, as mentioned above, was intended to confirm the understanding of the people at the time of the Constitution was adopted that power is not granted to the United States were reserved to the states or the people. This provision was not conceived to be a yardstick for measuring the powers given to the federal government or reserved to the states as was clearly indicated by its sponsor James Madison in the course of debate which took place while the amendment was pending concerning Hamilton's proposal to establish a national bank. Madison declared that: "Interference with the power of the state was no constitutional criterion of the power of Congress. If the power was not given, Congress could not exercise it; if given, they might exercise it, although it should interfere with the laws, even the constitution of the states."

For approximately a century from the death of Marshall until 1937, the tenth amendment was frequently invoked to curtail powers especially granted to Congress notably the power to regulate interstate commerce, to enforce the fourteenth amendment and to lay and collect taxes.

Among the reserve state powers are the taxing power of the states; the commerce power of the state, that is, to regulate commerce within the state; and the police power of the state, to name only a few.

There may be other powers that the state has and it is the purpose of this proposal to set up a committee through the executive branch of government to ascertain what these additional powers are and which are reserved to the states. (U. S. Constitution, 1954, Government Printing Office).

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Constitutional Convention

DELEGATE PROPOSAL NO. 243

BY DELEGATE FINCH

September 29 1967.

Introduced, read the first time and referred to the Committee on
The Executive Branch.

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution contain a
2 provision that the Governor be empowered to
3 create a State Office concerned with the co-
4 ordination of Federal, State, and local efforts
5 in the field of crime control (including, but
6 not limited to the areas of crime and delin-
7 quency prevention, detection, correction, and
8 rehabilitation), with the necessary powers to
9 carry out this role for public safety and
10 minimumization of crime and delinquency.

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CONSTITUTIONAL CONVENTION OF MARYLAND

Memorandum Accompanying Delegate Proposal No. 243

By Delegate Walter G. Finch, Ref to The Executive Branch

This proposal would require that the Constitution provide that the Governor create a new State office concerned with the coordination of Federal, State, and Local efforts in the field of crime control, together with the necessary powers to carry out this role for public safety and minimization of crime and delinquency in the State.

The responsibility would include, but not be limited to the area of crime and delinquency prevention, detection, correction, and rehabilitation.

The crime problem is the most serious social problem within Maryland. As the State's Chief Executive, the Governor should be empowered to establish and strengthen a State office which would have as its prime responsibility the coordination of crime control efforts on a Federal, State and Local level. Although this is done informally today, this is not enough. A full time effort would produce more desirable results.

Maryland Room
University of Maryland Library
College Park, Md.

Constitutional Convention

DELEGATE PROPOSAL NO. 244

BY DELEGATE FINCH

September 29 1967.

Introduced, read the first time and referred to the Committee on
The Executive Branch.

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution contain a
2 provision that the State shall establish a
3 medical institution to receive and treat nar-
4 cotic and drug patients referred to such
5 institution by courts and general medical
6 institutions.

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CONSTITUTIONAL CONVENTION OF MARYLAND

Memorandum Accompanying Delegate Proposal No. 244

By Delegate Walter G. Finch, referred to The Executive Branch

A provision in the Constitution providing that the State establish a medical institution to receive and treat narcotic and drug patients referred to such institution by the courts and general medical institutions would be a strong mandate toward curing one of the greatest problems facing this State.

The establishment of a specialized institution for the treatment of narcotic and drug offenders would provide a means to rehabilitate and reform the offender. The sentencing of such offender to an institution designed mainly for confinement, and not adequately equipped or staffed for the treatment of such individuals, is a travesty on justice. Effective and meaningful rehabilitation is the only means of assuring drug offenders, as well as society, that they will in the future be able to make a meaningful contribution to society as constructive members of the community. It is hoped that adoption of this proposal will achieve a significant improvement in the administration of criminal justice.

Maryland Room
University of Maryland Library
College Park, Md.

Constitutional Convention

DELEGATE PROPOSAL NO. 245

BY DELEGATE FINCH

September 29 , 1967.

Introduced, read the first time and referred to the Committee on
The Executive Branch.

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution contain a
2 provision that the Legislature establish the
3 office of Maryland Public Defender, with district
4 offices in Baltimore City and each of the counties;
5 with the Public Defender's function being to
6 defend all persons accused of a crime against the
7 State and where such accused is indigent.

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CONSTITUTIONAL CONVENTION OF MARYLAND

Memorandum Accompanying Delegate Proposal No. 245

By Delegate Walter G. Finch, Ref to The Executive Branch

This constitutional proposal is directed to establishing a Maryland public defender system in each jurisdiction of the State to defend all persons accused of a crime against the State and where such persons are indigent.

The concept of a public defender envisions "an established office with personnel immediately available ... to respond more quickly to a need for counsel, to provide investigatorial services at the optimum time, and to serve the indigent in other areas involving penalty or confinement whether or not the constitutions command that aid" 46 N.J. 39q, 415 217 A2d 441, 449 (1966). Such a concept is important today if criminal justice is to be a fair and efficient process - important not only to the accused but to the public at large and the members of the Bar as well.

The implementation of the right to counsel guarantee of the Sixth Amendment is a pressing problem in the administration of criminal justice. Such matters as representation at the pretrial stage and postconviction phases of the proceedings have not evolved as precisely as the definitely established right of the defendant to counsel at the trial level. Certainly, the courts have, however, recognized an ever expanding right to counsel. Whether counsel should be provided for persons charged with offenses other than felonies remains unresolved, at least unresolved by the Supreme Court - the point is that "(a)ny person haled into court, who is too poor to hire a lawyer, cannot be assured of a fair trial unless counsel is provided for him. This seems to us to be an obvious truth ... The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries but it is in ours ... [Equality] before the law cannot be realized if the poor man charged with crime has to face his accuser without a lawyer to assist him. " Gideon v. Wainwright, 372 U.S. 335, 344 (1963) Justice Clark pointed out that "That the Sixth Amendment requires appointment of counsel 'in all criminal prosecutions' is clear, both from the language of the Amendment and from the Court's interpretation." Gideon v. Wainwright, 372 U.S. 335, 348

It is reasonably clear then that the indigent, in order to obtain the due process justice to which he is entitled, has a right to counsel. The question then becomes what system or procedure will best fulfill the needs of the indigent and the State in this regard.

The recent Maryland approach to the problem has been the assigned counsel system. Appointment of counsel is effected by discretion of the Court, either alphabetically or by closest proximity of a particular lawyer to the scene at a particular time. That the assigned counsel system is not an adequate method of meeting the growing burden of indigency cases is revealed in the light of several poignant criticisms. Initially, it is to be pointed out that, despite formal qualifications as members of the Bar, assigned counsel have had little experience in the criminal courts. This lack of experience jeopardizes their clients since the State is represented by a full time prosecutor (in most instances).

Secondly, counsel for the indigent is provided too late in the proceedings - usually just before arraignment - and as much as a month may elapse before the accused's first interview with the assigned attorney, who is subject to the strain of other business. Then, even further, counsel is not always provided in juvenile or domestic relations courts. Finally, the system as it is now constituted, imposes an unequal burden upon the various members of the Bar - some judges may insist on constantly and repetitiously selecting only the most able members of the bar while others may select local lawyers who happen to frequent the courthouse.

The present assigned counsel system cannot adequately meet the need for defense counsel for indigents and should be discarded.

The alternative plan is the "public defender" system - salaried lawyers working out of a central office devoting all or most of their time to the specialized practice of representing indigent defendants. Experienced criminal lawyers will be available to enter the case at the in-custody interrogation phase, available to respond more quickly to the need for counsel upon short notice - not as late as the preliminary hearing or arraignment.

Importantly enough, statistics show that the public defender system, especially in urban areas (where crime is most prevalent) would be more economical to run than an assigned counsel system. Brounell, Legal Aid in the U. S. 144 (1951) Rubin, Justice for the Indigent: The Need for Public Defenders, 39 ABA 893, 894 (1953)

Constitutional Convention

DELEGATE PROPOSAL NO. 246

BY DELEGATE FINCH

September 29 , 1967.

Introduced, read the first time and referred to the Committee on

The Executive Branch.

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution shall contain
2 a provision which will create the Office of
3 Maryland Anti-Gambling Commission whose function
4 is combatting the recognized central financial
5 source of organized crime.

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11-1-1974
Submitted to the Executive Branch
12-1-74

N S T I T U T I O N A L C O N V E N T I O N O F M A R Y L A N D

Memorandum Accompanying Delegate Proposal No. 246

By Delegate Walter G. Finch, Ref. to The Executive Branch

This proposal calls for the Constitution to contain a provision which would create the Office of Maryland Anti-Gambling Commission whose function would be to combat the recognized central financial source of organized crime in this State.

It is both nationally and locally recognized that illegal gambling produces the treasury from which other facets of organized crime receive their financial beginnings, including prostitution, narcotics, lottery, to name only a few.

The battling of illegal gambling by twenty-four non coordinated independent jurisdictions is not enough.

It is essential that the State establish a State Anti-Gambling Commission to direct the battle effectively and efficiently in this State against organized crime and this can only be done by locating the central source thereof, which is the banking source.

Maryland Room
University of Maryland Library
College Park, Md.

Constitutional Convention

DELEGATE PROPOSAL NO. 247

BY DELEGATE FINCH

September 29 , 1967.

Introduced, read the first time and referred to the Committee on
Personal Rights and the Preamble.

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution contain a
2 provision that no person shall be interrogated
3 by police authorities once the investigation
4 turns from an inquisitorial process to an
5 accusatorial process.

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CONSTITUTIONAL CONVENTION OF MARYLAND

Memorandum Accompanying Delegate Proposal No. 247

By Delegate Walter G. Finch , Ref. to Personal Rights
and the Preamble

This proposal urges that the Constitution contain a provision that no person shall be interrogated by police authorities once the investigation has turned from an inquisitorial process to an accusatorial process in order to protect the rights of the citizens of this State.

This proposal would maintain as law the current Supreme Court ruling on interrogations. It further protects the individual from incriminating himself unknowingly.

This proposal should be considered with Delegate Proposal No. 254. The leading case is *Escobedo v. Illinois*, 378 U.S. 478, 12 L.Ed. 2d 977, 84 S.Ct. 1758, decided in 1964. In this case, Justice Goldberg delivered the opinion of the Court.

On the night of January 19, 1960, the Petitioner's brother-in-law was fatally shot. At 2:30 a.m., that morning, the Petitioner was arrested without a warrant and interrogated. The Petitioner made no statement to the police and was released at 5:00 p.m. that afternoon pursuant to a State Court Writ of Habeas Corpus obtained by a lawyer who had been retained by the Petitioner.

During the investigation, the Petitioner repeatedly requested that he be given a right to consult with his lawyer.

The critical question raised in this case was whether, under the circumstances, the refusal by the police to honor the Petitioner's request to consult with his lawyer during the course of an interrogation constitutes a denial of "The Assistance of Counsel" in violation of the Sixth Amendment to the Constitution as made "obligatory upon the States by the Fourteenth Amendment", (*Gideon v. Wainwright*, 372 U.S. 335-342, 83 S.Ct. 792-795, 9 L.Ed. 2d 799) and thereby renders inadmissible in a state criminal trial any incriminating statements elicited by the police during the interrogation.

This case which concerns an individual who had been arrested for a specific crime and the man admitted a certain implication in the crime and was indicted, was found by the Supreme Court to be in violation of the Sixth Amendment as forced upon the States by the Fourteenth Amendment. It was held in the above cited case, that where the process shifts from investigatory to accusatory and when its

purpose is on the accused and its purpose is to elicit a confession, our adversary system begins to operate and under the circumstances here, the accused must be permitted to consult his lawyer.

A possible example of this would be where a group of youngsters would be standing nearby a store that had just been broken into and perhaps two or three of the gang of six or seven were responsible for the crime. One youngster who had not played any significant part or played no part at all himself in the crime, might endeavor to cooperate with the law enforcement officers. In doing so, however, he might say things that he himself wouldn't realize and implicate himself. When the police officer began his questioning of the youngster without giving him the benefit of telling him what his current constitutional rights are, the youngster could possibly incriminate himself.

The purpose of this proposal would be to assure future citizens that the current situation would not change even if the Supreme Court so ruled differently in later cases. This would keep the citizen's right as expressed above, constant in the State of Maryland.

Constitutional Convention

DELEGATE PROPOSAL NO. 248

BY DELEGATE Chabot, Schloeder, Harry Taylor

October 2 , 1967.

Introduced, read the first time and referred to the Committee on
Suffrage and Elections

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that Article II of the Constitution,
2 dealing with Suffrage and Elections, shall include
3 a provision regarding general elections to read as
4 follows:

5
6 Section . General Elections

7
8 (a) A general election shall be held in
9 every even-numbered year on the Tuesday next
10 after the first Monday in November or such
11 other day as may be appointed by Federal law for
12 the election of members of the United States House
13 of Representatives. State officials shall be
14 elected at the general election in 1970 and
15 every fourth year thereafter.

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17 (b) A general election shall be held on
18 the Tuesday next after the first Monday in Novem-
19 ber in 1971 and every fourth year thereafter;
20 county officials and Baltimore City officials
21 shall be elected at such general elections.

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Constitutional Convention

DELEGATE PROPOSAL NO. 249

BY DELEGATE Chabot

October 2, 1967.

Introduced, read the first time and referred to the Committee on
Personal Rights and the Preamble

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the governmental power of eminent
2 domain shall be exercised only by the State or
3 its subdivisions or any agency thereof designated
4 by law to exercise such power within this State
5 and owned entirely by the State or its subdivisions,
6 the United States, other States or their sub-
7 divisions, or any combination of such owners.
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Minutes of the
Legislative Council
October 1918

MEMORANDUM by Delegate Herbert L. Chabot to Accompany
Delegate Proposal 249 .

This proposal, prompted by "the Second Battle of Antietam", is intended to limit the exercise of eminent domain to government -- responsible to the people. Such a useful but dangerous governmental power should not be available to a corporation which is properly responsible to its shareholders.

Maryland Room
University of Maryland Library
College Park, Md.

Constitutional Convention

DELEGATE PROPOSAL NO. 250

BY DELEGATE BARD

October 2 , 1967.

Introduced, read the first time and referred to the Committee on .
General Provisions

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution provide for
2 the protection and education of the people of the
3 State against unfair, inequitable or dishonest
4 sales, marketing, advertising and financing
5 practices.

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CONSTITUTIONAL CONVENTION OF MARYLAND

Memorandum to Accompany Delegate Proposal No. 250

By Delegate Bard-referred to General Provisions

We have come a long way since the 19th century concept of caveat emptor. In today's age of chemistry, synthetics, drugs, and complex and scientific articles, it is impossible for the buyer to beware; it is the seller who must have the key responsibility.

Eighteenth and nineteenth century man needed political security, and therefore, freedoms to vote, hold office, and to speak one's mind were the foremost concerns of the fathers of the Maryland Constitutions of 1776, 1851, 1864 and 1867. But the time has already passed when economic securities should have been established, with the accompanying guarantees that the product of our labor will purchase what is wholesome and safe. If man cannot be free from want, of what avail is the ballot?

Some earlier constitutions have given special protection to segments of the population, such as miners, fishermen, tobacco growers and lumbermen. We now recognize that single class protection cannot be justified in a Constitution. It is the consumer (who represents all the people, not just one class) whose savings, health, safety and peace of mind require constitutional protection.

In recent years, Michigan, New York, California, Rhode Island, Massachusetts, Connecticut, Maryland, and 18 other states have established agencies for consumer protection and education. Maryland now has an office of consumer protection, but like the early public schools (which did not have constitutional authorization until 1864), it is not broadly supported, and its position is tenuous. One legislature can establish consumer offices, another can destroy them; one governor can encourage them, another can ignore them.

The time has come when consumer protection as a broad principle needs constitutional authorization; the nature of the agency is not as important as the principle. New York State saw this need and placed the principle of consumer protection in its proposed constitution. While other sections of the proposed New York Constitution have received criticism, this section has been widely applauded.

Just as education was recognized as a necessity in a democratic state because it embraced everyone, so the consumer problems affect every last citizen. The individual and the state can be severely damaged or greatly enhanced by how we deal with these problems, especially in the technological and economic era in which we live.

Library of the
University of Maryland System
College Park, Md

Constitutional Convention

DELEGATE PROPOSAL NO. 251

BY DELEGATE GALLAGHER AT THE REQUEST OF THE
~~COMMITTEE~~ ON THE LEGISLATIVE BRANCH

October 2, 1967.

Introduced, read the first time and referred to the Committee on
State Finance and Taxation

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that Article VI, Section 6.10, of
2 the Constitution shall provide that the General
3 Assembly be permitted to consider supplementary
4 appropriation bills prior to the adoption of the
5 Governor's budget, to read as follows:

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7 Section 6.10. Supplementary Appropriations.

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10 Any other appropriation shall be embodied in
11 a separate bill, called a supplementary appro-
12 priation bill, which shall be limited to some
13 single work, object or purpose clearly defined
14 therein. A supplementary appropriations bill may
15 be considered by either house, but both houses
16 shall not finally act upon such appropriations until
17 after the budget bill has been finally acted upon
18 by both houses. A supplementary appropriation
19 bill shall provide the revenue necessary to pay the
20 appropriation by a tax, direct or indirect, to be
21 levied and collected as prescribed therein, or in
22 the case of a budget bill amendment or supplement
23 which has not become law by funds available therefor
24 in conformity with the estimate of revenues contained
25 in the budget or any supplement thereto.

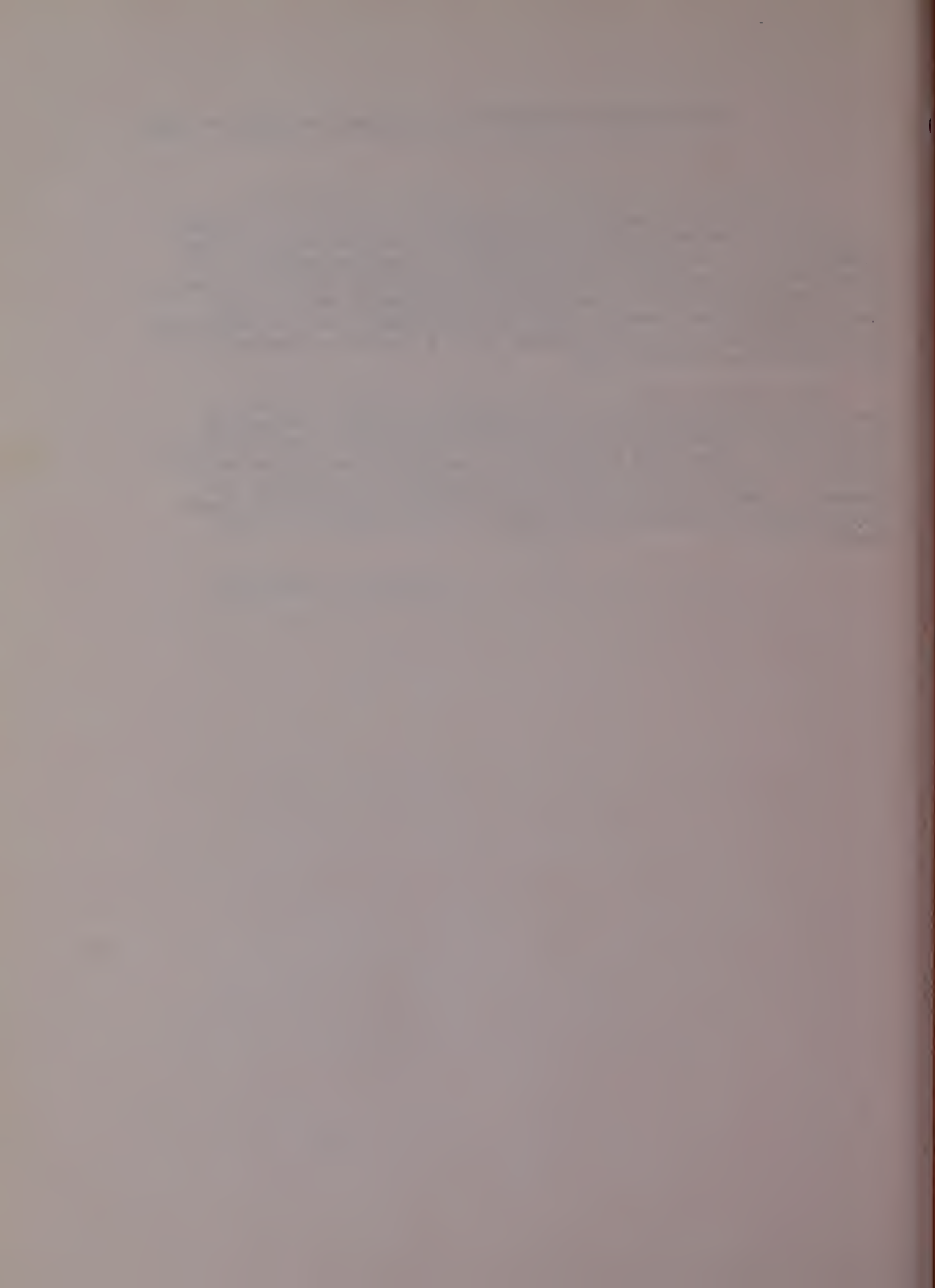
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MEMORANDUM ACCOMPANYING DELEGATE PROPOSAL NO. 251

The Eagleton Institute of Practical Politics at Rutgers University, New Brunswick, New Jersey, has released to the Committee on the Legislative Branch its recommendations for Constitutional changes involving the Maryland General Assembly. The Constitutional recommendations represent only a small portion of a much larger study on all aspects of the Maryland General Assembly to be released by the Eagleton Institute at an unspecified future date.

The Eagleton study took exception to the provision in the Constitutional Convention Commission draft forbidding legislative committees to consider supplemental appropriation bills until after the budget bill had been enacted by both houses. This Delegate Proposal therefore restores to the General Assembly in Section 6.10 the power to consider such supplemental appropriations prior to the adoption of the budget bill.

Francis X. Gallagher



Constitutional Convention

DELEGATE PROPOSAL NO. 252

BY DELEGATE CALLAGHER AT THE REQUEST OF THE
COMMITTEE ON THE LEGISLATIVE BRANCH

October 2 , 1967.

Introduced, read the first time and referred to the Committee on
State Finance and Taxation

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that Article VI, Section 6.08, of
2 the Constitution shall provide that the General
3 Assembly be permitted to set its own time limit
4 for consideration of the Governor's budget to
5 read as follows:

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Section 6.08. Enactment of Budget Bill.

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The budget bill shall become law when passed
by both houses of the General Assembly and shall
not be subject to veto by the Governor.

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The Eagleton Institute of Practical Politics at Rutgers University, New Brunswick, New Jersey, has released to the Committee on the Legislative Branch its recommendations for Constitutional changes involving the Maryland General Assembly. These Constitutional recommendations represent only a small portion of a much larger study on all aspects of the Maryland General Assembly to be released by the Eagleton Institute at an unspecified future date.

This proposal embodies the major Eagleton recommendations concerning legislative consideration of the Governor's budget. The Institute strongly attacked the provision of the Constitutional Convention Commission draft stating that the Governor's budget automatically become law 50 days after it is introduced. The Eagleton researchers regarded this as a serious limitation on the prerogatives of the legislature. This Delegate Proposal therefore deletes from Section 6.08 the provision for 50 day automatic enactment of the Governor's budget.

Francis X. Gallagher

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Constitutional Convention

DELEGATE PROPOSAL NO. 253

BY DELEGATE WHEATLEY

October 2 , 1967.

Introduced, read the first time and referred to the Committee on
State Finance and Taxation

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution provide for
2 a Legislative Auditor to be elected by the
3 General Assembly, and matters generally relating
4 thereto.

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7 The Constitution shall contain a provision
8 for the office of Legislative Auditor whose duty
9 it shall be to examine all matters relating to
10 receipt, disbursement and application and pro-
11 gramming of public funds, and in concert with the
12 General Assembly and in conjunction with the
13 Executive Branch, to participate in the prepara-
14 tion of the budget on behalf of the General
15 Assembly. He shall file a budget report each
16 year for the information of the General Assembly,
17 with comment thereon and recommendation in
18 specific detail. He shall make investigations
19 and reports on fiscal policy and planning as
20 shall be ordered by the General Assembly, or
21 those which he shall deem necessary for the
22 proper execution of his office. The Legislative
23 Auditor shall be elected by a majority of the
24 total members of the General Assembly during the
25 first general session in 1970 and at such time
26 thereafter as a vacancy shall occur. His term
27 of office shall be for 20 years and he shall not
28 be eligible for reelection. He shall be removable
29 only by a three-fifths vote of the total member-
30 ship of the General Assembly for misfeasance,

1 nonfeasance or malfeasance in office or mis-
2 conduct or incapacity. His qualifications shall
3 be established by the General Assembly and his
4 annual compensation, including retirement shall
5 be that paid the highest judicial official of
6 the State.

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Constitutional Convention

DELEGATE PROPOSAL NO. 254

BY DELEGATE FINCH

October 2 , 1967.

Introduced, read the first time and referred to the Committee on
Personal Rights and the Preamble

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution provide that
2 no confession will be admissible into evidence
3 unless the accused person has been advised of
4 his constitutional rights, including but not
5 limited to the right to have counsel, to remain
6 silent, and that his confession will be intro-
7 duced against him as evidence in the State's
8 case.

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CONSTITUTIONAL CONVENTION OF MARYLAND

Memorandum Accompanying Delegate Proposal No. 254

By Delegate Walter G. Finch, Ref. to Personal Rights and the Preamble

This proposal calls for the Constitution to contain a provision that no confession will be admissible into evidence in a criminal case unless the accused person has been advised of his constitutional rights, including but not limited to the right to be advised by counsel, to remain silent, and that his confession will be introduced against him as evidence in the state's case.

This proposal would insure that the current Supreme Court ruling on confessions will remain the law within the State of Maryland even though the Federal Rule might change. This is further assurance that a person will not incriminate himself unknowingly.

The Delegate Proposal is in reality the Escobedo case (Escobedo v. Illinois, 378 U.S. 478, 12 L.Ed. 2d 977, 84 S.Ct. 1758, 1964). This proposal should be considered with Delegate Proposal No. 247. Delegate Proposal No. 247 should be incorporated with Delegate Proposal No. 254.

THE
JOURNAL OF THE
ROYAL SOCIETY OF MEDICINE
PUBLISHED WEEKLY
BY THE SOCIETY'S SECRETARY
11, BEDFORD SQUARE, LONDON, W.C.1

Constitutional Convention

DELEGATE PROPOSAL NO. 255

BY DELEGATE FINCH

October 2 , 1967.

Introduced, read the first time and referred to the Committee on
The Judicial Branch.

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution provide that
2 a bi-partisan commission (composed of represen-
3 tatives of the major political parties, including
4 a representative proportion of laymen, lawyers,
5 and current judges) shall be appointed for the
6 selection of judges.

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N S T I T U T I O N A L C O N V E N T I O N O F M A R Y L A N D

Memorandum Accompanying Delegate Proposal No. 255

By Delegate Walter G. Finch, Ref. to The Judicial Branch

This proposal calls for a bi-partisan commission for the selection and appointment of judges. This bi-partisan commission would be composed of representatives of both major political parties, that is, the Democrats and the Republicans, and would include a representative proportion of laymen, lawyers and current sitting judges.

Such a bi-partisan commission for the selection and appointment of judges would lead to a better and unbiased selection of judges for the various court systems in Maryland.

C O N S T I T U T I O N A L C O N V E N T I O N O F M A R Y L A N D

Supplementary Memorandum Accompanying Proposal No. 255

By Delegate Walter G. Finch - referred to The Judicial
Branch

This proposal urges that the Constitution provide that the selection and appointment of judges for the new four tier court system of the State be performed by a bi-partisan commission, which is appointed by the Chief Executive of the State. The commission shall be composed of members of the major political parties of Maryland (e.g., Democratic and Republican), lay leaders, lawyers, and judges.

The intention of this proposal is to minimize political selection of judges and ensure that the best qualified lawyers are appointed as judges.

The following information may be useful for considering the procedure used by other states to make the final selection of judges:

1. All Elected on partisan Ballot:

Ark., Col., Fla., Ky., La., N.M., Pa.,
Tenn., Tex., W. Va.

2. All elected on non-partisan ballot:

Mich., Minn., Nev., N.D., Ohio, Oregon,
Wash., Wis.

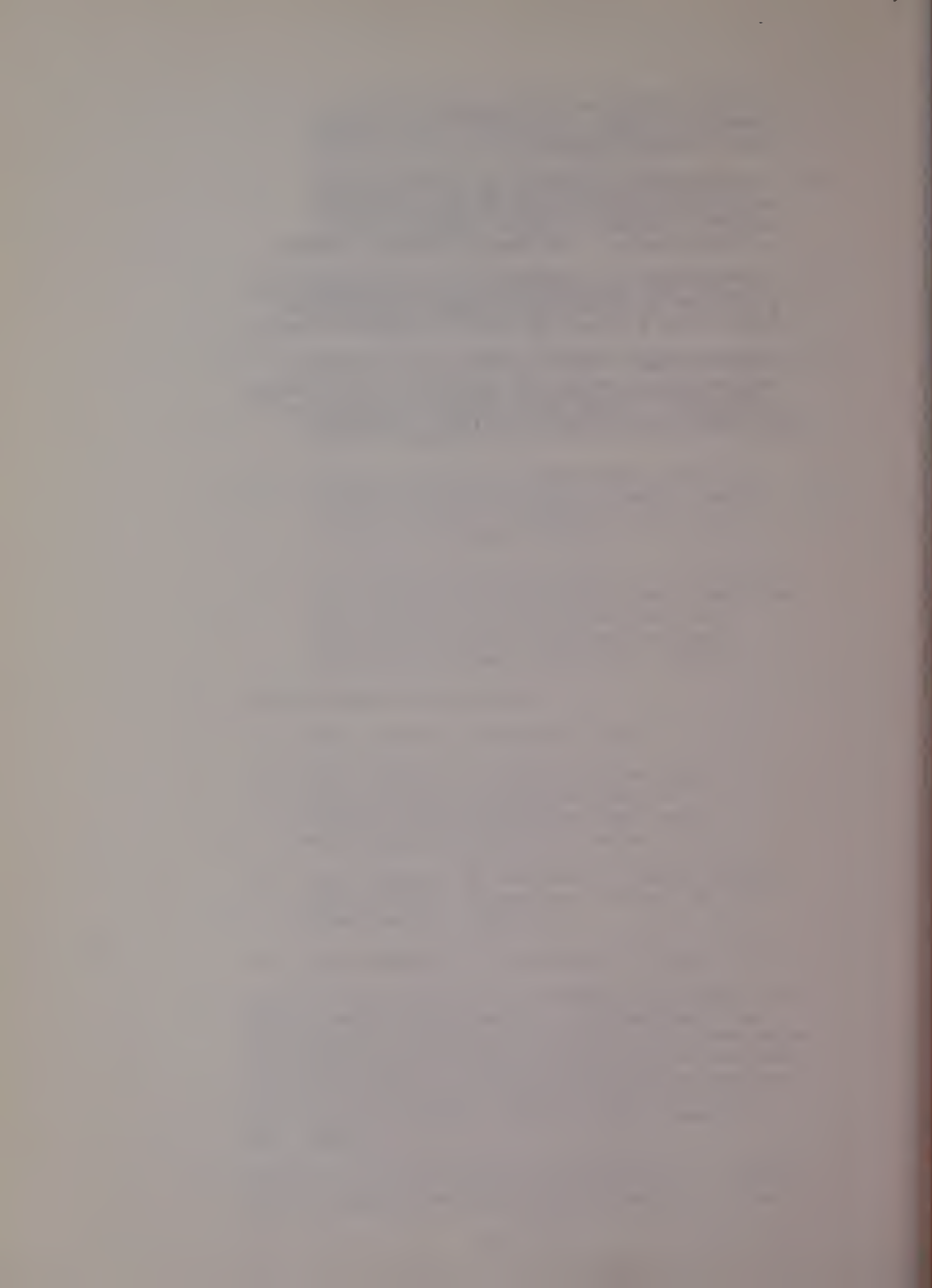
3. All elected on partisan ballot except:

- A. That some juvenile court judges are appointed. Some appointed by Governor, some by Legislature and some by county commissions. (Ala.)
- B. That county and some city court judges are appointed by the Governor with consent of the Senate (Ga.)
- C. That judge of municipal court is appointed by Governor (Ind.)
- D. That city police court justices are appointed by governing authority of each municipality. (Miss.)
- E. That Governor appoints judges of court of claims and designates members of appellate divisions of Supreme Court, and Mayor of N. Y. appoints judges of some local courts. (N.Y.)

- F. That a few county court judges are appointed by Governor or county commissioners, some magistrates are appointed by Governor or General Assembly, and juvenile court judges are appointed by county commissioners or city boards. (N.C.)
 - G. That judges of juvenile and municipal courts and the State Industrial Court are appointed. (Okla)
4. All elected on a non-partisan ballot except:
- A. That some judges of police courts are appointed by city councils or commissioners. (Mont.)
 - B. County justices of the peace, who are appointed by the senior circuit judge of the judicial circuit in which the county is located. (S.D.)
 - C. That juvenile court judges are appointed by Governor from a list of not less than two nominated by the Juvenile Court Commission, and town justices are appointed by town trustees. (Utah)
5. All appointed by Governor:
- A. with consent of Senate. (Del.)
 - B. with consent of Senate except that magistrates of municipal courts serving one municipality only are appointed by governing bodies. (N.J.)
 - C. with consent of Executive Council except that probate judges are elected on partisan ballot. (Maine)
 - D. with consent of the Council (Mass., N.H.)
6. Supreme Court Justices and Major Appellate and Trial judges appointed by the Governor from nominations by Judicial Council or a commission on Judicial Appointments (non-partisan nominating commissions.) Run on record for retention of office. All other judges elected on partisan ticket. (Alaska, Cal., Iowa., Kansas, Mo., Neb.)
7. Supreme Court Justices and district or circuit court judges elected by the legislature. Re-

maining judges generally appointed by governor. (R.I., S.C., Vt., Va.) some other judges elected.

8. Supreme Court Justices and Major Trial court justices elected on non-partisan ballot; Justice of Peace elected on a partisan basis. (Arizona, Wyoming, Idaho)
9. All selected by legislature from nominations submitted by Governor, except that probate judges are elected on partisan ballot. (Conn.)
10. Supreme Court Justices and circuit court judges appointed by the Governor with consent of Senate. District Magistrates appointed by Chief Justice of the State. (Hawaii)



Constitutional Convention

DELEGATE PROPOSAL NO. 256

BY DELEGATE FINCH

October 2 , 1967.

Introduced, read the first time and referred to the Committee on
The Legislative Branch.

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution provide for
2 the establishment of a bipartisan reapportion-
3 ment commission to reapportion legislative and
4 congressional districts upon the completion and
5 publication of each federal census.
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C O N S T I T U T I O N A L C O N V E N T I O N O F M A R Y L A N D

Memorandum Accompanying Delegate Proposal No. 256

By Delegate Walter G. Finch, Referred to The
Legislative Branch

This proposal calls for a constitutional provision for establishment of a bipartisan reapportionment commission to reapportion legislative and congressional districts upon the completion and publication of each federal census. It should be considered with Delegate Proposal No. 306.

It is now a constitutional principle that both houses of all state legislatures must be apportioned on the basis of population. Maryland must, therefore, reapportion both the House of Delegates and the Senate on population basis as commanded in Maryland Committee v. Tawes (377 US 656 [1964]) and other Reapportionment Cases. (Reynolds v. Sims, 377 US 533 [1964]), (Lucas v. Colorado Gen. Assembly, 377 US 713 [1964]) Never before these cases, since the founding of Maryland has either chamber of the legislature been apportioned strictly according to population. However, if the Maryland Legislature and other state legislatures had been willing to apportion even one house on the basis of population and to reapportion that house as population patterns changed, it is probable that the reapportionment cases would never have arisen and the States could have continued to function with one house based on factors other than population alone.

The reluctance of the state legislatures to reapportion themselves, at least in one house, according to population, cost them in the long run and it is incumbent upon this Constitutional Convention to insure that legislative reluctance to reapportion will not again hinder the processes of government; to provide a formula for consistent population reapportionment. This is a necessary function of this new Constitution. Certainly, if

the legislature is left to itself to act to reapportion fairly, from time to time, on the basis of population, and it again fails to so act, the courts will intercede and act for the legislature. This result is to be avoided, for the courts are not, basically, equipped to carry out this function.

Not only should the Constitution insure that reapportionment is carried out effectively from time to time, but, even further, it should establish the rule that reapportionment will not be conducted by the legislature itself; but, rather, it should be conducted by a bipartisan or, better phrased, a nonpartisan Reapportionment Commission. In this way, the procedures of apportionment and districting will be insulated from the gravely distorting pressures of partisan politics and the ever-present danger of political gerrymandering.

The bipartisan or nonpartisan commission would have an appointed membership and would include representatives from the leading political parties. However, the majority of the members would be selected from non-legislative and non-governmental positions. The Governor, for example, might be given the authority to appoint members to the commission.

The new Michigan Constitution, adopted in 1963, required that a Commission of eight members be responsible for redistricting the State according to a certain elaborate formula. Then, the Reynolds decision came upon the scene and the Michigan State Supreme Court struck down the commission's proposed plans and ordered compliance with the one man, one vote edict. The commission was not infallible - it deadlocked and the court took the plans under its own wing and chose the one that it felt most nearly complied with the Constitutional requirement of one man, one vote.

In summary then, several points are set forth implicitly in this proposal: apportionment on a population basis is a constitutional reality. Even more, reapportionment will be necessary as the population shifts in order that the one man, one vote edict be upheld and the action of the legislature be valid as the product of a legally constituted legislature. The proper time to investigate the necessity of reapportionment is upon the completion and publication of each federal census. The legislature is not the proper body to reapportion itself due to the pressures of politics and the possibility of gerrymandering, as well as the possibility of action, such as reapportionment, of an improperly apportioned legislature being itself void or null. Rather, the proper body to reapportion the legislature would be an independent bipartisan or, in effect, non-partisan commission, composed of some strictly political figures (evenly balanced as to party representation) but numerically dominated by non-legislative, non-governmental members of the community (also balanced as to party representation).

Mineral Room
University of Maryland Library
College Park, Md.

Constitutional Convention

DELEGATE PROPOSAL NO. 257

BY DELEGATE FINCH

October 2 , 1967.

Introduced, read the first time and referred to the Committee on
Personal Rights and the Preamble.

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution provide that
2 the State's Attorney shall disclose to the
3 defense counsel for the accused any evidence
4 which the State will introduce against the
5 defendants
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CONSTITUTIONAL CONVENTION OF MARYLAND

Memorandum Accompanying Delegate Proposal No. 257

By Delegate Walter G. Finch, Personal Rights and
the Preamble

This proposal calls for the Constitution to contain a provision that the State's Attorney shall disclose to the defense counsel for the accused any evidence which the State will introduce against the defendant. Also the proposal would require the defense counsel for the defendant to disclose any information which he may have pertaining to his defense of the defendant and any witnesses that he might introduce. The purpose of the proposal is to eliminate the element of surprise.

This proposal seems only fair and avoids surprise tactics during the trial which may leave the defendant not fully prepared to defend on those surprise issues. A pure sense of justice demands that the full truth be known on both sides and that the trial consider issues known going into the trial.

This proposal would guarantee that every person indicted in Maryland would have the opportunity to know of every bit of evidence against him; every witness, that is, any witness that might be used against him; every facet that he must defend himself against; and thus place him in a position to be fully prepared to defend himself because the State would be mandatorily required to provide the defendant with the full evidence for which they are going to try the defendant on.

By the same token, the defense is required to submit its material going into the trial. This would merely provide for equity and therefore purer justice in our State.

This proposal automatically would necessitate the same requirement on the part of the defense counsel, thus making sure that the State has access to all of the material to which the defense would be utilizing in defending the defendant in order that the State may have the opportunity to fully review and fully question at the proper time.

With such a sound provision in the Constitution, it would guarantee more so than in any other part of the Country, a judicial system and a prosecuting and defense system that would be seeking purer and fuller justice. Thus, it would not allow individuals, on the State's side or on the defense side, to circumvent justice through trickery.

- 2 -

Even though procedurally these elements may be no problem in most of the jurisdictions, this Constitutional provision would assure the Defendant that his freedom would be safeguarded.

As a special note on this proposal, the State should allow the Defense Counsel the right to use any of the State's facilities in defending the Defendant. For example, the crime laboratories should be available to Defendants, which could help in proving their innocence. A specific example would be the use of State laboratories for blood examinations of materials found at the scene of a crime as well as ballistic analyses.

Constitutional Convention

DELEGATE PROPOSAL NO. 258

BY DELEGATES WINSLOW, BOROM, BOTHE, BOYLES, CASE,
CLAGETT, FREEDLANDER, GROH, GRUMBAC HER, HARDWICKE, JETT
KOSS, MARION, MUDD, NEEDLE, RALEY, SOLLINS, WAGANDT

October 2, 1967.

Introduced, read the first time and referred to the Committee on
The Legislative Branch

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution provide for
2 the creation of a unicameral legislature, the
3 method of apportionment, and matters generally
4 relating thereto, to read as follows:

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8 The General Assembly shall consist of one
9 chamber, limited in size from a minimum of 60
10 to a maximum of 90.

11

12 After each census of the United States, the
13 State shall be reapportioned and redistricted so
14 as to conform to the "One man, one vote" idea.
15 For this purpose a commission of fifteen members
16 shall be appointed by the Governor which shall
17 reapportion and redistrict the State, controlled
18 by the guidelines of compactness and contiguity
19 of territory and with the number of people per
20 delegate in each district varying not more than
21 5% from the average.

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It is the purpose of the proponents of unicameralism to strengthen the legislature in its law-making power. It is believed that the concentration of power in one body will contribute to that end, whereas bicameralism tends to water down authority and make it more difficult for the legislature to act in the general welfare. It is believed, moreover, that the strength of the legislature depends in considerable part upon the quality of the membership. It is reasonable to assume that it will be easier for the electorate to select legislators of high quality if they are not required to choose so many representatives. Moreover, the position of legislator in a one-house legislature will be looked upon as one of greater importance and prestige, thus attracting people of greater ability and stature as candidates.

The old argument that bicameralism allows for a differentiation in the representation of interests has been largely dissolved by the "one man - one vote" requirement. No longer can one house represent people and the other acreage. Both houses must be based on population and in a large part on the same people.

The only argument remaining in favor of bicameralism is that the second house can act as a check upon "hasty and ill-considered" action of the first. There is grave doubt that this "second look" is very effective. By the time that the bulk of the measures arrive in the second house, there is insufficient time for more than the most casual consideration. Considering the fact that many measures are passed in one house on the theory that they will be stopped in the other, the whole procedure raises grave questions of both efficiency and responsibility.

How many "checks" are necessary? It would seem that a preliminary investigation of most important legislation by the Legislative Council, responsible study by a legislative committee, acceptance by the entire house, review by the executive with a veto possible,

Page Two - Winslow - Proposal # 258

reconsideration by the legislature after the veto, judicial review, and public opinion as expressed in the news media, in pressure groups, in citizens' associations would be enough.

A unicameral body, limited in size and freed from shackles of time limits, duplication of efforts and "bureaucratic" possibilities will attract to its membership people of high quality and responsibility so that the Senate may meet the challenge of the last third of the twentieth century.

Constitutional Convention

DELEGATE PROPOSAL NO. 259

BY DELEGATE Chabot and Cardin

October 2 , 1967.

Introduced, read the first time and referred to the Committee on Suffrage and Elections.

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that Article II of the Constitution,
2 dealing with Suffrage and Elections shall include
3 a provision regarding pluralities and tie votes,
4 to read as follows:

Section . Pluralities; Tie Votes

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8 (a) The candidates receiving the greatest
9 numbers of votes shall be elected to, or in the
10 case of primary elections become the nominees
11 for, the offices for which they were candidates.
12

13 (b) If at any election for Governor or
14 other office elected directly by the voters of
15 the entire State, any two or more candidates
16 shall have the highest and an equal number of
17 votes, then the General Assembly shall choose
18 from among such candidates the person to fill
19 the office for which they were candidates. In
20 making such choice, each member of the General
21 Assembly shall have one vote and the candidate
22 receiving the greatest number of votes shall be
23 elected to the office for which he was a candidate.
24

25 (c) If at any election for any county or
26 Baltimore City office elected directly by the voters
27 of the entire county or Baltimore City, other than
28 an office in the legislative body of the county
29 or Baltimore City, any two or more candidates
30 shall have the highest and an equal number of

1 votes, then the legislative body of the county
2 or Baltimore City shall choose from among such
3 candidates the person to fill the office for
4 which they were candidates. In making such
5 choice, each member of the legislative body
6 shall have one vote and the candidate receiving
7 the greatest number of votes shall be elected
8 to the office for which he was a candidate.

9
10 (d) Except as otherwise provided in this
11 section, if at any election any two or more
12 candidates shall have the highest and an equal
13 number of votes, a new election shall be
14 ordered by the Governor, to be held as soon as
15 may be practicable.
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MEMORANDUM by Delegates Shoshana Cardin and
Herbert L. Chabot, Accompanying Delegate
Proposal 259.

Delegate Proposal 2 makes a plurality sufficient for election in a general election, but appears to permit runoff primary elections. Delegate Proposal 51 deals with primaries and Delegate Proposal 58 appears to authorize the General Assembly to determine this matter with regard to primaries. However, those proposals do not appear to deal with tie votes in either general elections or primaries.

The approach taken in this proposal is drawn largely from the present Constitution, Articles II (Section 4), IV (Section 12), V (Sections 2 and 8), and XV (Section 4).

Alfred P. ...
... ..
...

Constitutional Convention

DELEGATE PROPOSAL NO. 260

BY DELEGATE PRICE

October 2, 1967.

Introduced, read the first time and referred to the Committee on
Personal Rights and the Preamble

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Declaration of Rights
2 provide for freedom of religion, separation of
3 church and State and matters generally relating
4 thereto, to read as follows:

5
6 No law shall be enacted respecting an establish-
7 ment of religion, or prohibiting the free exer-
8 cise thereof. No public funds or the credit of
9 the State shall be used for the direct or indi-
10 rect benefit of any institution in which any
11 sectarian or denominational tenets or doctrines
12 are taught, or in which any form of religious
13 segregation, racial discrimination, or other bias
14 is practiced. No person shall be disqualified
15 from holding public office or be rendered in-
16 competent as a witness or juror because of his
17 opinions on matters of religious belief.

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Constitutional Convention

DELEGATE PROPOSAL NO. 261

BY DELEGATES Jett and Singer

October 3, 1967.

Introduced, read the first time and referred to the Committee on

General Provisions

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution neither pro-
2 hibit nor establish autonomy or independence
3 for the governing boards of the University of
4 Maryland, the state colleges or any other
5 institution of higher learning.

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Constitutional Convention

DELEGATE PROPOSAL NO. 262

BY DELEGATE CARSON

October 3 , 1967.

Introduced, read the first time and referred to the Committee on
The Judicial Branch

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the office of Sheriff be
2 retained as an elective office under the
3 Constitution.
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Constitutional Convention

DELEGATE PROPOSAL NO. 263

BY DELEGATE R.G. BOILEAU

October 3, 1967.

Introduced, read the first time and referred to the Committee on
Personal Rights and the Preamble

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Preamble should read
2 as follows:
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PREAMBLE

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9 We, the People of the State of Maryland,
10 recognizing our rights as a sovereign member
11 of the Federal System of Government, reaffirm
12 our adherence to the Constitution of the
13 United States of America; and in order to
14 assure our liberty, freedom, fraternity,
15 equality, health, safety and welfare, we
16 do ordain and establish this constitution:
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Constitutional Convention

DELEGATE PROPOSAL NO. 264

BY DELEGATE GALLAGHER

October 3, 1967.

Introduced, read the first time and referred to the Committee on
The Legislative Branch

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that Article III of the Constitution
2 dealing with the Legislative Branch shall contain
3 the following provisions regarding the creation
4 and operation of a combined Unicameral-
5 Bicameral legislature (CUB), to read as follows:

6

7 Legislative Power

8 The legislative power of the State is vested
9 in the General Assembly, which shall consist
10 of two houses, the Senate and the House of Delegates,
11 assembling together.

12

13 Legislative Districts

14 The State shall be divided by law into
15 districts for the election of Senators and
16 into districts for the election of Delegates.
17 Each Senator district shall consist of three
18 combined and contiguous Delegate districts.

19

20 District Representation

21 One Senator shall represent each Senator
22 district. One delegate shall represent each
23 delegate district.

24

25 Size of General Assembly

26 The number of Senators shall be prescribed
27 by law but shall not exceed thirty. The number
28 of Delegates shall be prescribed by law but
29 shall not exceed ninety.

30

1 Consideration of Bills

2 A Bill may originate in either house of the
3 General Assembly. Bills shall be considered
4 only by joint-committees of the Senate and House
5 of Delegates with representation on the joint
6 committees in an exact ratio of three Delegates
7 to every one Senator.

8
9 Bills in committee shall be reported to
10 the floor by a majority vote of the Senators
11 and Delegates on the committee voting together.

12
13 Journal and Passage of Bills

14 The Senate and the House of Delegates shall
15 meet together for debate, amendment, and
16 passage of all legislation. No bill shall be
17 enacted unless it is passed by a majority of
18 the Senators voting and a majority of the Delegates
19 voting.

20
21 Additional Senate Sessions

22 The Senate may from time to time meet in
23 special session in its own chamber for additional
24 discussion and debate, but no legislation may be
25 introduced, amended, or enacted at such special
26 sessions.

MEMORANDUM TO ACCOMPANY DELEGATE PROPOSAL NO. 264

Since the goal of the CUB proposal is to achieve in a single legislative body the merits of both bicameralism and unicameralism, the proposal can best be evaluated in terms of the supposed advantages of these two systems.

Unicameralism

The strongest arguments in favor of unicameralism are that it is simple, easy to understand, and focuses public attention directly on a single bill going through a single set of hearings in a single house.

The CUB proposal achieves all three of these goals. Each bill would go through the legislature only once, would be subject to only one set of committee hearings, and would be voted on simultaneously by both the Senate and the House of Delegates. Much of the confusion resulting from a two house system, particularly the secrecy of the Senate-House Conference Committee, would be eliminated.

Unicameralism is also lauded for creating direct lines of responsibility between legislators and legislation. The CUB idea would similarly heighten responsibility. Senators and Delegates would vote simultaneously on each legislative proposal and it would be crystal clear to the voters who had voted for and who had voted against.

A secondary argument for unicameralism is that it is cheaper to operate. The CUB proposal would achieve partial savings by eliminating dual hearings, time consuming conference committees, dual reports, and dual copies of legislation.

Bi-Cameralism

The strongest argument for bicameralism is that it provides for a check on hasty legislation by one house or the other. The CUB idea achieves this goal by providing for simul-

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aneous but separately recorded votes by the Senate and House of Delegates. No legislation can be enacted unless it receives the majority vote of the Senators voting as well as a majority vote of the Delegates voting.

A second argument for bicameralism is that Senators and Delegates represent different constituencies. The CUB proposal readily achieves this goal because Senators serve constituencies three times the size of House constituencies.

An additional argument for bicameralism is that Senators and Delegates play different roles. Delegates are less well-known, but because there are more of them they have the time to study legislation in committee in great detail. Senators have less time for detailed study than Delegates, but have greater access to publicity through floor debate and thus can focus public attention on important issues.

The CUB idea is specifically designed to preserve the differing roles of Senators and Delegates under bicameralism. The more numerous Delegates will have time to carefully study legislation in Committee. It is for this reason that Delegates are permitted to dominate the committee structure through the rule that bills may be reported out of joint committees by a majority of vote of the Delegates and Senators on the joint committee voting together. Since there are three times as many Delegates as Senators on each joint-committee, the Delegates will clearly dominate.

Senators, on the other hand, will dominate voting on the Assembly floor. To be enacted, all legislation will need a majority vote of the Senators voting as well as a majority vote of the Delegates voting. In addition, Senators will be able to indulge in further debate and discussion in their own Chamber following the close of general debate on the Assembly floor.

CONCLUSIONS

The Combined Unicameral-Bicameral (CUB) proposal thus achieves the simplifying and rationalizing goals of unicameralism while preserving the major merits of bicameralism. It would not significantly reduce the number of legislators. It would retain the familiar idea of there being both Senators and Delegates. It fits perfectly the "one man, one vote" requirements of apportionment. Its most important merit, however, is that it simultaneously achieves unity with "checks and balances".

Del. Francis X. Gallagher

Maryland Room
University of Maryland Library
College Park, Md.

Constitutional Convention

DELEGATE PROPOSAL NO. 265

BY DELEGATE FINCH

October 3, 1967.

Introduced, read the first time and referred to the Committee on
Personal Rights and the Preamble

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution provide for
2 the assumption by the State of all court costs in
3 criminal cases.

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JAN 1 1964
Maryland Historical Society
Baltimore, Md.

N S T I T U T I O N A L C O N V E N T I O N O F M A R Y L A N D

Memorandum Accompanying Delegate Proposal No. 265

**By Delegate Walter G. Finch, Ref. to Personal Rights
and the Preamble**

This proposal is directed to a Constitutional requirement that the State will assume all court costs in criminal cases. It could be broadened to have the State assume all of the operating costs of the various courts of the State and thus eliminate any court costs.

This proposal is asking that the court costs being currently paid by the defendants in criminal cases, that is, the convicted persons in the courts, be eliminated.

There are two reasons, basically, in favor of this proposal.

First, the majority of the persons in this State who would be tried in criminal cases are already paying taxes to the State for the maintenance and operation of the court system of the State. Thus, if a convicted person is required to pay the court costs, he is being subjected to double taxation. Thus, when they are asked to pay court costs in their own particular cases, they are being unfairly and inequitably treated.

Secondly, although Maryland currently has little, if any, jurisdictional activity requiring the individual to pay the fee of the lower court justices, this does not mean that in the future such requirements couldn't be re-established. A Constitutional proposal such as the one in issue at this time, would eliminate that possibility and make the matter one of basic law in the State, that the State would pay for all court costs in criminal cases.

There also is a third point which could be considered in this proposal, an individual very often, who is being fined, is not in a financial position to pay some of the higher court costs and upon close analysis, you will find that the family of the defendant is going to suffer more than the individual himself, when such money must be secured from the defendant.

The overall effect certainly would provide for a better administration and more effective and efficient administration of criminal justice.

It is to be noted that this matter or similar material has been adopted in the proposed Constitution of New York which is to be voted upon in November by the citizens of New York.

Constitutional Convention

DELEGATE PROPOSAL NO. 266

BY DELEGATE FINCH

October 3, 1967.

Introduced, read the first time and referred to the Committee on
State Finance and Taxation

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution provide for
2 the assumption by the State of all welfare pro-
3 gram financing.
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Harvard University
Department of the History of Art and Architecture
Cabinet of Prints and Drawings

THE HISTORY OF THE ARTS AND SCIENCES

OF THE HUMAN MIND

IN THE SEVENTEENTH CENTURY

BY JOHN LOCKE

IN TWO VOLUMES

THE SECOND EDITION

REVISED BY THE AUTHOR

WITH NOTES BY

JOHN LOCKE

AND

JOHN LOCKE

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CONSTITUTIONAL CONVENTION OF MARYLAND

Memorandum Accompanying Delegate Proposal No. 266 .

By Delegate Walter G. Finch, referred to State Finance
and Taxation.

This proposal relates to a provision in the Constitution for the State to operate the public welfare system.

The intention of this proposal is to change the public welfare program in Maryland from a State, supervised locally, to State operated. Presently, pursuant to Article 88A, Section 1, of the Annotated Code of Maryland (1964 Replacement Volume) the State Department of Public Welfare is established. The Department is the central, coordinating and directing agency of all welfare activities in this State. Also, under Article 88A, Section 13 of the Annotated Code of Maryland, (1964 Replacement Volume and 1966 Cumulative Supplement) the State Department of Public Welfare is empowered to create in each county a welfare board to administer programs in the field of public welfare. Administrative costs of the 23 counties and one city welfare boards are paid out of funds derived from local sources or out of allotments from State or federal funds. However, the presence of a "dual" agency is not the most efficient and economical manner in which to effectuate the goals of public welfare. Thus, the basis of this proposal is to reduce the duplication of effort and expense and make the State Department the sole supervisor of the system.

The arguments in favor of a State - operated system are as follows:

1. There would be greater control of the program. The centralization of authority in the State Department would result in a greater accountability and more uniform application of policy.
2. The State-operated system is favored by at least 32 States.
3. Administration would be more efficient, especially in the fiscal and statistical fields. Regional offices could be established with regional directors combining several smaller counties and the total personnel for these business functions would be less than the present number and the personnel could be at a higher level of competence. The proposed conversion to

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College Park, Md.

a state-wide system of electronic data processing in the Department would be enhanced by such a change and would be less costly than it would be under the present system. Local welfare offices would still have to be maintained in the new system.

4. Accounting and funding of the program would be simplified. In the 1968 budget, local funds amount to \$8,077,199, which is only 8.4% of the total (exclusive of the appropriation for nursing homes). According to the projected system of appropriation (James Formula), this percentage will tend to decrease in future years if the costs increase, since under the formula Baltimore City will not be required to put up more local tax funds for the program. This law, in effect, is moving the State closer to a State-operated program.
5. Local interest in the program can be maintained through the continued use of local advisory boards. The appointment of the local director would be a function of the State Director under a State-operated systems (not by the local advisory board).
6. The change would provide much needed relief to local tax sources in the amount of eight million dollars per year.
7. If Maryland discarded its county welfare departments and established in their place a fewer number of State welfare offices using regional areas rather than counties as the basis for district offices, rough estimates of administrative saving are as follows:

	<u>Range</u>	
Reduction in number of department directors	\$50,000	\$100,000
Reduction in number of clericals and other staff required	120,000	180,000
Reduction in physical facilities costs	<u>35,000</u>	<u>70,000</u>
	\$205,000	\$350,000
(compiled from a study made by Booz, Allen and Hamilton to Raleigh C. Holson, Director, State Department of Public Welfare.)		

8. The county welfare board have few powers although the statutes describe it as an administrative

board. Thus both agencies are confused by the functions of the other and county boards may not warrant their existence.

9. Policy should be formulated either by the State Department or the county director in those few areas in which the county has an option to promote State uniformity.
10. The appointment of the local director should be made directly by the State Director of Public Welfare from a State Merit System list. The local director should understand his reporting relationship and responsibility to the State Director.
11. The present system of having two separate personnel systems in the same program is extremely cumbersome and sometimes results in inequities. Employees cannot easily transfer from city to county or vice versa due to the differences in retirement systems, vacation and sick leave allowances, different sick benefits and similar fringe benefits.
12. State operation would provide a more direct line of authority between the State and the local units.
13. If the State-operated system was to be adopted, a provision to this effect in the Constitution would eliminate the cost to amend the present statutes.

The final discussion of this memorandum addresses itself to the constitutional merit of this proposal. The immediate question might arise - is not this proposal one that would be more appropriate for legislative discussion? The answer to this charge is despite apparent savings of potentially significant sums, such a proposal flies in the face of long political tradition and ingrained sense of local autonomy. Thus, the proposal could not endure the severe attack it would receive in the political body of the legislature. Therefore, a constitutional remedy may be the only cure for economy within the welfare system.

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Constitutional Convention

DELEGATE PROPOSAL NO. 267

BY DELEGATE FINCH

October 3 , 1967.

Introduced, read the first time and referred to the Committee on
Personal Rights and the Preamble

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution provide that
2 it shall be a criminal offense for any person
3 receiving compensation from the State to solicit
4 funds of any kind from the public at large or
5 from governmental employees.

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Maryland State
Department of Legislative Services
Constitutional Committee

INSTITUTIONAL CONVENTION OF MARYLAND

Memorandum Accompanying Delegate Proposal No. 267

By Delegate Walter G. Finch, Ref. to Personal Rights
and the Preamble

This proposal urges that the Constitution provide that it shall be a criminal offense for any person receiving compensation from the State to solicit funds of any kind from the public at large or from governmental employees. It is felt that this provision is of constitutional level because of its wide spread currently throughout the State of Maryland.

There are a number of publicized cases that one could point to as recently as within the last month, where citizens have made public complaints that they have been, in their own words, "pressured" into contributing funds for very worthwhile purposes. The individual is, however, not giving freely of his own will but is being coerced into contributing funds.

There have been examples also, of where police officers have contacted business persons and requested financial assistance for special programs the police were interested in. This certainly leaves that person in a weak position to give the police officer a negative response.

Very often, the individuals concerned will not make public announcement of this coercion but will pass complaints on to others, hoping that they may be able to do something without their specific introduction into the case.

It seems to go without saying that philosophically, individuals should be allowed to support those charities and those purposes with which they are in concert. However, the Constitution should provide that no public official can use his office to place the citizen in a position where his contribution is not a free will gift, but is one given with the belief that if he reneges on the contribution, that perhaps, some negative reaction will come back to him.

In this way, the individual may be placed in an unfavorable position in the eyes of his superiors who themselves, have been asked to secure certain amounts of money

to make their own department or their own agencies look as if they are more community-minded than the next agency or department.

In addition to the charitable situation, there are also some very serious problems resulting from public officials who seek political contribution through the sale of tickets for Bull Roasts, Oyster Roasts, dances etc. This same reasoning would be sound in excluding such contributions also.

Constitutional Convention

DELEGATE PROPOSAL NO. 268

BY DELEGATE FINCH

October 3, 1967.

Introduced, read the first time and referred to the Committee on
The Judicial Branch

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution contain a
2 provision that any trial judge shall have
3 continuing jurisdiction in any case where,
4 subsequent to the conviction by the court it
5 is disclosed by the prosecuting witness or
6 witnesses that they committed perjury, and
7 such disclosure warrants the immediate release
8 of the defendant.

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Submitted to the
Maryland Judicial Conference
Caldwell Park, Md.

CONSTITUTIONAL CONVENTION OF MARYLAND

Memorandum Accompanying Delegate Proposal No. 268

By Delegate Walter G. Finch, Ref. to The Judicial Branch

This proposal calls for a Constitutional provision that any trial judge shall have continuing jurisdiction in any case where, subsequent to the conviction of a person by it, it is disclosed by a prosecuting witness or witnesses or through other sources that perjury has been committed and which disclosure warrants the immediate release of the convicted person.

At the present time, there is a serious flaw in our current criminal justice machinery because it does not provide for an accelerated action for releasing a person from custody who has been victimized by perjured testimony where the perjury is learned after ninety days from the sentence of the court.

The general procedure today is for the convicted person to appeal to the Governor for a pardon and this then becomes an administrative investigation performed by the Maryland State Department of Parole and Probation.

This proposal, therefore, establishes a constitutional right of a person so wronged, to appeal to the State's Chief Executive Officer for an immediate review of new evidence in order that a full pardon with its restored rights and privileges may be more quickly given to that wronged person following confirmation of the perjury allegation.

In this proposal, therefore, the trial judge would have continuing jurisdiction in any case following the conviction of the convicted person so that if perjured testimony is uncovered, the judge would be able to immediately release the convicted person, if such disclosure warrants his immediate release.

This proposal could also provide for the convicted person to have an immediate review of the evidence by the Chief Executive Officer of the State in the event the trial judge would not take such action, as indicated above.

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College Park, Md.

Constitutional Convention

DELEGATE PROPOSAL NO. 269

BY DELEGATE FINCH

October 3 , 1967.

Introduced, read the first time and referred to the Committee on

Personal Rights and the Preamble

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution provide
2 that it shall be mandatory for restitution to
3 be made in all false pretense and forgery
4 criminal cases, the purpose of this proposal
5 being to minimize financial loss to the victims
6 within the business community.

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CONSTITUTIONAL CONVENTION OF MARYLAND

Memorandum Accompanying Delegate Proposal No. 269

By Delegate Walter G. Finch, Ref. to Personal Rights and the Preamble

This proposal calls for a Constitutional provision wherein it would be mandatory for the person who obtained monies, goods or the like, by false pretenses and by forgery to reimburse the victims within the business community in order to minimize their financial losses.

The United States Code Annotated, Title 18, on Crimes and Criminal Procedures, Section 471 provides: "Whoever with intent to defraud, falsely makes, forges, counterfeits, or alters any obligation or other security of the United States, shall be fined by not more than \$5000 or imprisonment not more than 15 years, or both."

The Maryland law on the other hand, provides in the Annotated Code of the Public General Laws of Maryland, Article 27, on Counterfeiting and Forging in Section 44 that: "Any person who shall falsely make, forge or counterfeit, or cause or procure to be falsely made, forged or counterfeited; or willingly aid or assist in falsely making, forging, altering or counterfeiting any deed, will, testament or codicil, bond, writing obligatory, bill of exchange (check), promissory note for the payment of money or property, endorsement or assignment of any bond, writing obligatory, bill of exchange, promissory note for the payment of money or property, acquittance or receipt for money or property, with intention to defraud any person whomsoever, or shall utter or publish as true any false, forged, altered or counterfeited deed, will, testament or codicil bond, writing obligatory, bill of exchange, promissory note for the payment of money or property, acquittance or receipt for money or property, shall be deemed a felon and on being convicted thereof shall be sentenced to the penitentiary for not less than one nor more than ten years."

Section 140 under Article 27, pertaining to obtaining money, etc., under false pretenses with intent to defraud, states the following: "Any person who shall by any false pretense obtain from any other person any chattel, money or valuable security, with intent to defraud any person of the same, shall be guilty of a misdemeanor, and being convicted thereof

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shall be liable, at the discretion of the court, to be punished by fine and imprisonment, or by confinement in the penitentiary for not less than two years nor more than ten years, as the court shall award; provided always, that if upon the trial of any person charged with such misdemeanor it shall be proved that he obtained the property in question in any such manner as to amount in law to larceny or robbery, he shall not by reason thereof be entitled to be acquitted of such misdemeanor; and no person tried upon such misdemeanor shall be afterwards liable to be prosecuted for larceny or robbery upon the same facts; and provided also, that a mere promise for future payment, though not intended to be performed, shall be sufficient to authorize a conviction under this section. In Wicomico County, St. Mary's County and in Worcester County, and in Caroline County and Prince George's County where the amount of money or the value of the thing received does not exceed three hundred dollars (\$300.00), the people's court and the trial magistrates, respectively, shall have concurrent jurisdiction with the circuit court to try persons charged with violating this section and sections 142 and 144 of this article, provided that persons so convicted in the people's court or trial magistrate's court shall not be sentenced to the penitentiary by that court. In Baltimore City where the amount of money or the value of the thing received does not exceed five hundred dollars (\$500.00), the Municipal Court of Baltimore City shall have jurisdiction to try persons charged with violating this section, provided that persons so convicted in the Municipal Court shall not be sentenced to the penitentiary by that court."

Section 142 of Article 27, also provides with relation to obtaining money, etc., by bad check or by means of credit card, the following: "Every person who, with intent to cheat and defraud another, shall obtain money, credit, goods, services, release from any debt or obligation for services, or for materials or labor in the construction or repair of any building or buildings, wares or anything of value, of the value of one hundred dollars or more, by means of a check, draft or any other negotiable instrument of any kind drawn, whether by such person or by any other person, persons, firm or corporation, upon any bank, persons, firm, or corporation, not indebted to drawer, or where the drawer, or drawers thereof, shall not have provided for the payment or acceptance, or by means of a credit card or purported credit authorization which he is not authorized to present and use for such purpose, and the same be not paid upon presentation, shall be deemed to have obtained such money, credit, goods, services, release,

wares, or things of value by means of a false pretense, and upon conviction, shall be fined or imprisoned, or both as provided in Section 140 of this Article, at the discretion of the court. Where the value of such money, credit, goods, services, release, wares, or anything of value is less than one hundred dollars, such persons upon conviction, shall be deemed guilty of a misdemeanor and fined not more than fifty dollars or imprisoned for not more than eighteen months in the house of correction or jail, or both fined and imprisoned in the discretion of the court and the trial magistrates of the counties shall have concurrent jurisdiction over such offense with the circuit courts of the counties. The giving of the aforesaid worthless check, draft or negotiable instrument or of the credit card or purported credit authorization shall be prima facie evidence of intent to cheat or defraud; provided that if such person shall be a bona fide resident of the State of Maryland and shall deposit with the drawee of such paper or the acceptor of the credit card or purported credit authorization within ten days thereafter funds sufficient to meet the same, with all costs and interest which may have accrued he shall not be prosecuted under this section, and no prosecution either by presentment, indictment or otherwise, shall be instituted or commenced until after the expiration of said period of ten days."

It is to be noted that check forgers alone, take approximately \$1500 from the honest businessman each minute with the total in the United States exceeding approximately 2 million dollars a day.

This proposal would make it constitutionally mandatory that the courts require restitution to be made in all false pretense and forgery criminal cases in order that the financial losses to the victims within the business community would be minimized.

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College Park, Md

Constitutional Convention

DELEGATE PROPOSAL NO. 270

BY DELEGATE FINCH

October 3 , 1967.

Introduced, read the first time and referred to the Committee on
State Finance and Taxation

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution authorize
2 the legislature to characterize all private
3 and parochial school tuitions as either tax
4 deductible or as a tax credit, computed at a
5 pre-determined percentage of the tuition
6 expenses.

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CONSTITUTIONAL CONVENTION OF MARYLAND

Memorandum Accompanying Delegate Proposal No. 270

By Delegate Walter G. Finch

Manuscript Division
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This proposal relates to having a provision in the Maryland Constitution authorizing the legislature to characterize all private and parochial school tuitions as either tax deductible or as a tax credit, computed at a pre-determined percentage of the tuition expenses. This proposal is to be considered in conjunction with Delegate Proposal No. 271.

The thought behind this proposal, indeed the foundation for it, is the notion that private and parochial schools should receive aid for education from the state. Before this concept is discussed in a logical, practical context, this writer feels that it must be justified on a proper constitutional level. That is, in view of the controversy surrounding the Supreme Court's interpretation of the First Amendment right of freedom of religion, it must be averred that the concept behind this proposal is perfectly constitutional and will not be struck from a new Maryland Constitution by the High Court.

Initially, it is well to remember that the First Amendment references to freedom of religion are incumbent upon the state governments as the First Amendment right has been incorporated into the Fourteenth Amendment "Due Process Clause" by the Supreme Court. Everson v. Board of Education, 330 US 1 (1947). Basically, the First Amendment guarantee of religious freedom can be broken down into two phases; the establishment clause and the free exercise clause. Thus, it behooves the state not to establish any particular religion or any religion at all in any manner whatsoever and it behooves the state, at the same time, not to impinge or interfere with the religious beliefs of any of its people.

Now, one might, at the outset, argue that state aid to parochial schools constitutes state support or advocacy of a particular religion and, therefore, constitutes a violation of the establishment clause of the First

Amendment made incumbent upon the states by the Fourteenth Amendment "Due Process Clause". This might have been valid argument in 1947 when the high court handed down the Everson decision, defining the establishment clause so as to demand an absolute separation of state and church in every conceivable realm.

However, the court has, since 1947, modified and qualified the harsh Everson definition of the establishment clause by superimposing upon it what was originally termed the "public purpose" test and what is now called the "secular purpose" test. That is, the court has said that legislation, which incidentally aids religion, is constitutional if its primary purpose is secular. It is this writer's contention that the secular purpose test will resolve the question of whether state aid to parochial schools violates the establishment clause in favor of the constitutionality of such aid.

The primary purpose of legislation aiding parochial schools is the advancement of the general education of a considerable number of our citizens and the betterment of conditions under which these people are educated. We are all aware that parochial schools have long provided many of our children with an excellent education, well-rounded in terms of subject matter, including history, mathematics, english, government and politics, and other related subjects. In fact, the study of religion composes but a small, rather isolated portion of the curriculum.

The education of our citizens is the barometer of our future. The state provides much in the way of educational facilities for the great majority of our citizens. However, not all of our citizens choose to attend or have their children attend state established schools. Over a long period of time, a tradition has developed among Catholic people that they attend parochial schools and Catholic educators have upheld the tradition by maintaining a high level of general and, in several notable instances, special education.

Now, the state is no less interested in the general education of its citizens because they choose to attend parochial schools. As a constitutional matter, it is here suggested that state aid is a valid exercise of state powers. As a practical matter, our state needs to have all of its people as well educated as possible and the parochial schools have shown the inclination and ability to accomplish this end

Finally, let us not forget that the parents of children attending parochial schools pay taxes to the state just as every other citizen does. These parents, through their tax dollars, contribute generally to the education of children who attend public schools. To say that all children could attend public schools is to say nothing. The point is that our citizens are free to choose (thank goodness) accredited schools other than public schools in which to educate their children and all of our citizens pay taxes to aid education in general. Should not some aid be given parochial schools for the general good of all of our people?

This proposal, through the medium of a tax credit or tax deduction, offers one possible form of aid.

Now, private schools, other than parochial schools, are included in the scope of this proposal and, in the swirl of controversy over the religious issues raised by the Constitution, private schools are not to be overlooked. Private schools fulfill a purpose, perhaps, even above their significant contributions in the field of general education, in that they provide our state with an individualistic type of education which produces a certain number of citizens particularly exposed to discipline and particularly exposed to close association with a very favorable instructor-student ratio. The state needs the nonconforming type of educational background given in private schools spread among our population.

Parents of private school children pay for their children's education but they pay taxes as well and thereby support public education. If private school education can use some aid, some form of support, let the state lend a helping hand, as this provision would envision.

For a further consideration of this problem of state aid to parochial and private schools, consideration should be given to an article entitled "The Constitution, The Supreme Court, and Religion", by William A. Carroll, in the American Political Science Review, September 1967, pp. 657 etc.

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Constitutional Convention

DELEGATE PROPOSAL NO. 271

BY DELEGATE FINCH

October 3, 1967.

Introduced, read the first time and referred to the Committee on
General Provisions

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution provide that
2 the State shall pay for the educational training
3 in any private or parochial school approved by
4 the Maryland Department of Education to the same
5 degree that the State finances public education.
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CONSTITUTIONAL CONVENTION OF MARYLAND

Memorandum Accompanying Delegate Proposal No. 271

By Delegate Walter G. Finch

This proposal would call for the constitution to have a provision wherein the State shall pay for educational training in any private or parochial school approved by the Maryland Department of Education to the same degree that the State finances public education.

The sponsor does not think that this would constitute an improper use of funds which should be restricted or prohibited. An individual who chooses to go to a private institution, which performs the same service as a public institution, should be afforded the same opportunity to secure financial assistance as he would have if he had chose a public educational institution. Such individuals should not be penalized because of his choice, and by denying him financial assistance if he attends a private institution, then in effect is what is done. His freedom of choice is thus infringed upon.

INSTITUTIONAL CONVENTION OF MARYLAND

Memorandum Accompanying Delegate Proposal No. 271

By Delegate Walter G. Finch

This proposal relates to having a provision in the Maryland Constitution authorizing the legislature to pass suitable legislation for the State to pay for the educational training in any private or parochial school approved by the Maryland Department of Education to the same degree that the State finances public education.

The thought behind this proposal, indeed the foundation for it, is the notion that private and parochial schools should receive aid for education from the State. Before this concept is discussed in a logical, practical context, this writer feels that it must be justified on a proper constitutional level. That is, in view of the controversy surrounding the Supreme Court's interpretation of the First Amendment right of freedom of religion, it must be averred that the concept behind this proposal is perfectly constitutional and will not be struck from a new Maryland Constitution by the High Court.

Initially, it is well to remember that the First Amendment references to freedom of religion are incumbent upon the State governments as the First Amendment right has been incorporated into the Fourteenth Amendment "Due Process Clause" by the Supreme Court. Everson v. Board of Education, 330 US 1 (1947). Basically, the First Amendment guarantee of religious freedom can be broken down into two phases; the establishment clause and the free exercise clause. Thus, it behooves the State not to establish any particular religion or any religion at all in any manner whatsoever and it behooves the State, at the same time, not to impinge or interfere with the religious beliefs of any of its people.

Now, one might, at the outset, argue that State aid to parochial schools constitutes State support or advocacy of a particular religion and, therefore, constitutes a violation of the establishment clause of the First Amendment made incumbent upon the States by the Fourteenth Amendment "Due Process Clause". This might have been valid argument in 1947 when the high court handed down the Everson decision, defining the establishment clause so as to demand an absolute separation of State and church in every conceivable realm.

However, the court has, since 1947, modified and qualified the harsh Everson definition of the establishment clause by superimposing upon it what was originally termed the "public purpose" test and what is now called the "secular purpose" test. That is, the court has said that legislation, which incidentally aids religion, is constitutional if its primary purpose is secular. It is this writer's contention that the secular purpose test will resolve the question of whether state aid to parochial schools violates the establishment clause in favor of the constitutionality of such aid.

The primary purpose of legislation aiding parochial schools is the advancement of the general education of a considerable number of our citizens and the betterment of conditions under which these people are educated. We are all aware that parochial schools have long provided many of our children with an excellent education, well-rounded in terms of subject matter, including history, mathematics, english, government and politics, and other related subjects. In fact, the study of religion composes but a small, rather isolated portion of the curriculum.

The education of our citizens is the barometer of our future. The state provides much in the way of educational facilities for the great majority of our citizens. However, not all of our citizens choose to attend or have their children attend state established schools. Over a long period of time, a tradition has developed among Catholic people that they attend parochial schools and Catholic educators have upheld the tradition by maintaining a high level of general and, in several notable instances, special education.

Now, the state is no less interested in the general education of its citizens because they choose to attend parochial schools. As a constitutional matter, it is here suggested that state aid is a valid exercise of state powers. As a practical matter, our state needs to have all of its people as well educated as possible and the parochial schools have shown the inclination and ability to accomplish this end.

Finally, let us not forget that the parents of children attending parochial schools pay taxes to the state just as every other citizen does. These parents, through their tax dollars, contribute generally to the education of children who attend public schools. To say that all children could attend public schools is to say nothing. The point is that our citizens are free to choose (thank goodness) accredited schools other than public schools in which to educate their children and all of our citizens pay taxes to aid education in general. Should not

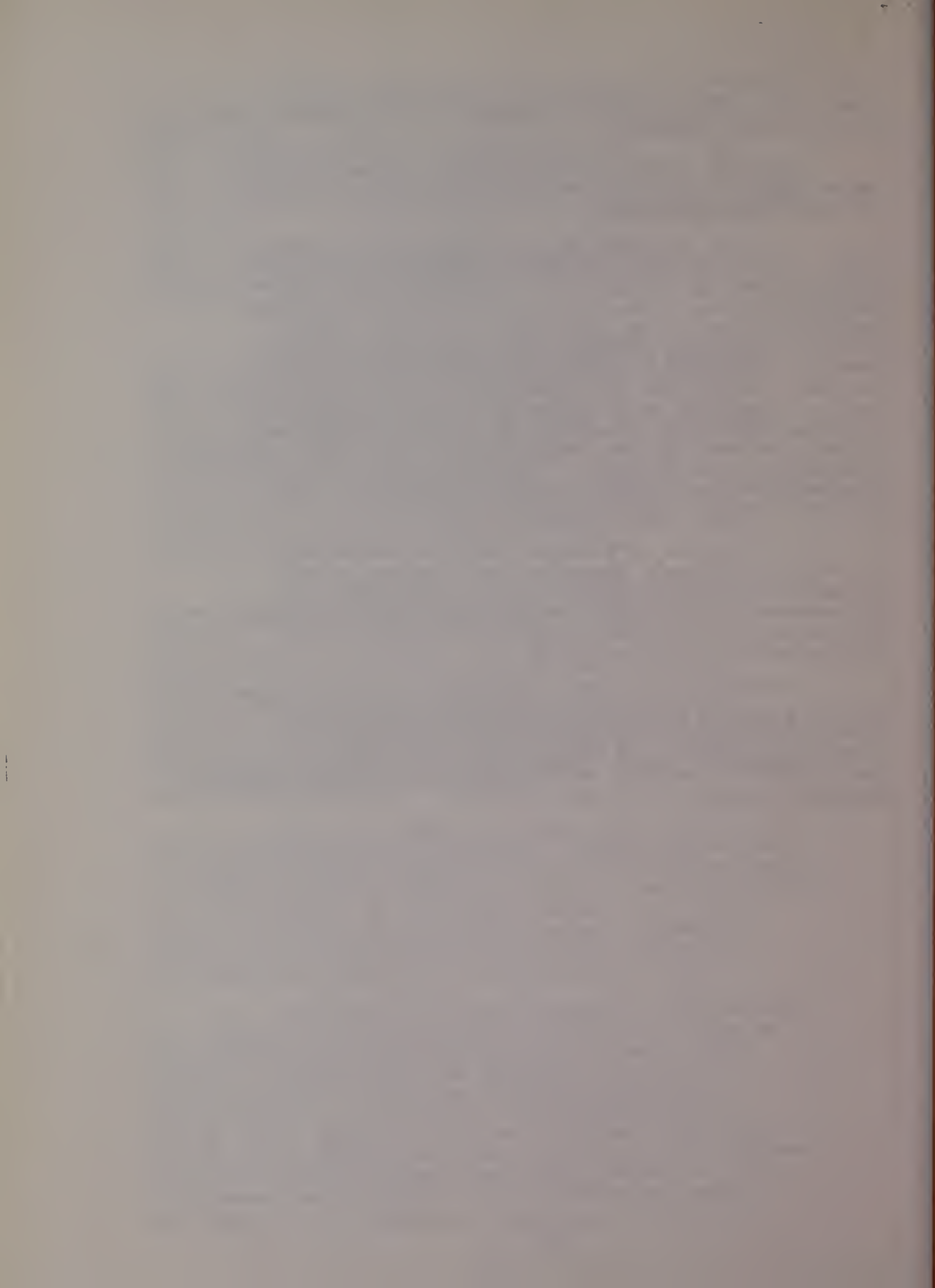
some aid be given parochial schools for the general good of all of our people?

This proposal, through the medium of payment to private and parochial schools as indicated, offers one possible form of aid.

Now, private schools, other than parochial type schools, are included in the scope of this proposal and, in the swirl of controversy over the religious issues raised by the Constitution, private schools are not to be overlooked. Private schools fulfill a purpose, perhaps, even above their significant contributions in the field of general education, in that they provide our state with an individualistic type of education which produces a certain number of citizens particularly exposed to discipline and particularly exposed to close association with a very favorable instructor-student ratio. The state needs the non-conforming type of educational background given in private schools spread among our population.

Parents of private school children pay for their children's education but they pay taxes as well and thereby support public education. If private school education can use some aid, some form of support, let the state lend a helping hand, as this provision would envision.

For a further consideration of this problem of state aid to parochial and private schools, consideration should be given to an article entitled, "The Constitution, The Supreme Court, and Religion", by William A. Carroll, in the American Political Science Review, September 1967, pp. 657 etc.



Constitutional Convention

DELEGATE PROPOSAL NO. 272

BY DELEGATE FINCH

October 3, 1967.

Introduced, read the first time and referred to the Committee on
The Judicial Branch

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution provide
2 that upon the conviction and sentencing of
3 a defendant to more than sixty (60) days in
4 a correctional institution, that such
5 sentence shall be referred and reviewed by a
6 correctional classification committee whose
7 responsibility it would be to determine the
8 type of correctional treatment and the duration
9 thereof, in order to ensure equal justice to
10 all in the area of sentencing for commission
11 of crimes.

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C O N S T I T U T I O N A L C O N V E N T I O N O F M A R Y L A N D

Memorandum to Accompanying Delegate Proposal No. 272

By: Delegate Walter G. Finch, Referred to The Judicial Branch

This proposal relates generally to the problem of uniform sentencing for criminal offenses committed against the State, and a suggested procedure for solving the problem presented.

Uniformity of sentence is desirable not only to the defendant, but also to the public, since it promotes even-handed justice. Strict uniformity, however, is not the ultimate goal because this would mean a return to a penal code in which sentences are fixed by statute ahead of time for each crime.

However, complete disparity in sentencing is the opposite extreme. For example, some years ago, citing 20 Federal Probation 15, 17-18 (Dec. 1956), an analysis was made of over 7,000 sentences imposed by six judges over a 9-year period in a county in New Jersey.

The judges dealt with a wide spectrum of cases, including larceny, robbery, burglary, embezzlement, assault and battery and rape. No judge was given a special assignment, and all received cases in which, considering them as a whole and over a long period of time, the felonies were committed under similar circumstances, and the offenders, as groups, did not vary in general personal makeup and social background. However, it was disclosed that while Judge A imposed sentences of imprisonment in 36% of his cases and Judge B in 34% of his, Judges C, D, E and F imposed such sentences in 53, 58, 45 and 50%, respectively, of their cases.

Thus, an offender convicted of a serious crime had but 3 chances out of 10 of going to prison under Judges A and B, and 5 out of 10 if sentenced by Judges C, D, E or F. Allowing the defendant to remain free in the community on probation, instead of sending him to prison, ranged, among the various judges, from 20 to 32%; suspension of sentence, from 16 to 34%. Many other states reflect similar statistics.

In the 1940 Annual Report of Attorney General (federal system) Robert H. Jackson, he said "...It is obviously repugnant to one's sense of justice that the judgment meted out to an offender should be dependent

in large part on a purely fortuitous circumstance; namely, the personality of the particular judge before whom the case happens to come for disposition. While absolute equality is neither desirable nor attainable, a greater approach to similarity of treatment than now prevails appears to be desirable, if not essential.

Since 1940, the erraticism of sentencing in the federal system has improved, but disparity still exists. In 1955, the Report of Federal Bureau of Prisons noted that the average sentence for all offenses to federal institutions during the fiscal year ending June 30, 1955, was 25 months. The Third Circuit, as a whole, averaged 24.4 months, but the district states of Delaware averaged 13.7 months, New Jersey 20.8 months, Pennsylvania (Eastern) 21.6 months, Pennsylvania (Middle) 53 months, Pennsylvania (Western) 25.7 months. Other districts had similar divergencies.

Imprisonment versus probation presents considerable disparity. For example, the First Circuit percentage of probation is 61.8%, approximately twice (in 1956) that of the 34.5% known throughout the federal system; Maine and New Hampshire notably differ, 39.6% in the former and 84.2% in the latter. The percentages of probationers received from the courts by the federal probation system for the year ended June 30, 1955, ranged in the Fourth Circuit from 25.5% in Maryland to 62% in North Carolina (Eastern).

In a report released on October 9, 1967, by the Maryland Crime Investigating Commission, the significance of the above is to be noted pertaining to Judges and their sentencing. It is to be noted that between 1956 and 1966 in Maryland:

1. Roughly one-third of the gambling defendants in both 1956 and 1966 were not adjudicated guilty.
2. The relative number of defendants who received no jail or suspended sentences went from 19% in 1956 to 34% in 1966.
3. The percent of the defendants found guilty who received suspended sentences, with or without fines, increased from 30% to 49%.
4. The number of defendants who were found guilty but were not actually sentenced to jail increased from 49% to 82%.

5. All total, the percent of the defendants who were brought to trial on some type of gambling charge and who were sentenced to jail decreased from 35% to 13%.

6. Judge Carter found 25% (1956) and 33% (1966) of the defendants not guilty; Judge Grady found 31% not guilty, and Judge Cullen found 44% not guilty.

7. Of those defendants who were found guilty, a fine alone was imposed upon 20% (1956) and 25% (1966) by Judge Carter, 25% by Judge Grady, and 83% by Judge Cullen.

8. Of those defendants who were found guilty, suspended sentences, with or without fines, were imposed upon 26% (1956) and 25% (1966) by Judge Carter, 67% by Judge Grady, and 13% by Judge Cullen.

9. Of those defendants who were found guilty, actual jail sentences were imposed upon 54% (1956) and 50% (1966) by Judge Carter, 8% by Judge Grady, and 4% by Judge Cullen.

10. Out of all the defendants charged with some form of gambling violation who appeared before their benches, 40% (1956) and 33% (1966) were sentenced by Judge Carter to jail, 6% were sentenced by Judge Grady to jail, and less than 2% were sentenced by Judge Cullen to jail.

What conclusion can be drawn from the foregoing survey? Such "disparity offends principles of justice", as well as, inhibits the effectiveness of treatment in criminal administration. Furthermore, "prisoner morale bears a relationship to prisoner response to the rehabilitative process and may be adversely affected if the offender believes that his sentencing is the product of the prejudices or idiosyncrasies of a particular judge." (C. F. Comment, 69 Yale L. G. 1453, 1459 [1960]).

If a sentencing commission would be established, sentencing could be expected to become more uniform. The commission would be specialized in the field of "penology" --- and would be consistent in directing sentences in similar cases. Furthermore, with the members of the commission being experts, they would be acquainted with the proper form of penal treatment necessary for particular cases, and also, the commission could determine a duration for sentence consistent with the demands of society for just punishment, but not shorter or in excess of a "therapeutic" period designed for the rehabilitation of the convicted.

Other advantages to the proposed system are:

1. The trial judge is released of his trial duty to sentence the convicted, thus permitting valuable "Court Time" to be utilized only for "judicial matters".
2. More cases per session could be heard if less time were spent in deciding the penal disposition of the convicted.
3. The trial judge would not have to hear testimony of the convicted's past record, personal history, or medical data--required to properly sentence a defendant--thus, reducing expensive court cost involved.
4. The members of the commission, being experts in the area of correctional institutions, would have a current knowledge of the best institution available for a particular convict.
5. Social Reports and Personal Data of the convicted could be reviewed by the commission in an informal manner, with the goal to establish the best institutionalization available for the particular convict.
6. The Commission would develop an efficient and complete procedure to determine sentencing -- which would lead to uniform and equality of sentencing.
7. The Commission utilized past case experience and following up studies to determine the most effective and best sentence for the convict under consideration.

In summary, it is recommended that the Constitution contain a broad statement pertaining to the uniformity in handling of sentencing for criminal offenses against the State and Society, and leaving it to the legislature to prescribe the procedure therefore. (For additional information, see "The Gambling Rackets Within Maryland 1956 - 1966" by the Maryland Crime Investigation Commission, October 9, 1967).

Constitutional Convention

DELEGATE PROPOSAL NO. 273

BY DELEGATE FINCH

October 3, 1967.

Introduced, read the first time and referred to the Committee on
Personal Rights and the Preamble

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution contain a
2 a provision that the State's forest reserves
3 shall be kept "Forever Wild", and further provide
4 for a "conservation bill of rights" preserving
5 the natural resources, wild life and wasting
6 assets of the State.

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N S T I T U T I O N A L C O N V E N T I O N O F M A R Y L A N D

Memorandum Accompanying Delegate Proposal No. 273

By Delegate Walter G. Finch, Ref. to Personal Rights
and the Preamble

This Proposal urges that the Constituion contain a clause that the State's forest preserves shall be "forever wild and free". The provision further provides for a "Conservation Bill of Rights" preserving the natural resources, wild life and wasting assets, that is, timbers, minerals and the like, of the State.

It is the intent of this proposal that all lands of the State which are now completely owned or which are hereafter acquired by the State and which would constitute a forest preserve or park, will be forever hereafter kept as wild forest lands and be forever free. It is the intent of this proposal that these lands and properties would not be sold or exchanged, leased, or be taken by any corporation, public or private, association, partnership or individual, nor would the wasting assets thereon, such as timber, plants or the like, be sold, destroyed, removed or mutilated.

It would be the general policy of the State, as set forth in a Constitutional provision as mentioned above, to preserve, conserve, and protect its natural resources and scenic beauty. The proposal would also encourage the preservation of wild life, wasting assets of various types and would encourage the State to provide for the acquisition of land and waters including improvements thereon, which are entirely outside of the forest preserve owned by the State and local governments.

It is also felt that the proposal would lead to the dedication of properties so acquired or now owned which, because of their natural beauty, wilderness characteristics or geological, ecological or historical significance, should be preserved and administered for the use and enjoyment of all the citizens of this State.

Properties so obtained and dedicated would constitute the natural and historical preserves of the State and they could not, in the future, be taken unless authorized by the people.

This proposal, therefore, would institute a new system by a Constitutional provision, for the conservation and protection of all of the State's natural resources and scenic beauty. It would provide a constitutional requirement that the lands in the State's forest preserves shall be "forever kept as wild forest lands". In addition, it would be the public policy of the State as set forth in the Constitution, to conserve and protect its natural resources and scenic beauty and therefore, to encourage the improvement of its agricultural lands. Also, such a provision would lead to a creation of a State nature and historical preserve of properties of natural and historical significance to the State.

Finally, such properties so dedicated would be "forever wild and free" unless authorized for other purposes by either a constitutional provision or by proper acts of the Legislature, approved by the people of the State.

Constitutional Convention

DELEGATE PROPOSAL NO. 274

BY DELEGATE FINCH

October 3, 1967.

Introduced, read the first time and referred to the Committee on
State Finance and Taxation

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution contain a
2 provision requiring an annual external audit
3 by independent firms of certified public
4 accountants of the finances of the legislative,
5 judicial and executive branches of government,
6 including all departments, agencies and instru-
7 mentalities thereof; and further provide that
8 determination of such certified public accountant
9 firms shall be made by legislative appointment
10 and ratification of such appointment by a vote
11 of the People at each State gubernatorial
12 election.

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Marland Room
Staff Room of Marland Library
College Park, Md.

C O N S T I T U T I O N A L C O N V E N T I O N O F M A R Y L A N D

Memorandum Accompanying Delegate Proposal No. 274

By Delegate Walter G. Finch, referred to State Finance
and Taxation

A provision in the Constitution requiring an external audit of all governmental branches, departments, agencies, and instrumentalities of government by independent certified public accounting firms would ensure that all monies are being properly spent according to law, and further, would lead to great savings for the benefit of the people. This proposal should be considered in connection with Delegate Proposals nos. 153 and 208.

Under the present system the State Auditor is responsible for examining the books and accounts of the various agencies and departments of the State of Maryland. In essence, the State audits itself. The sponsor is of the opinion that an external audit conducted by an independent firm of certified public accountants is a better method of conducting such an important function. For obvious reasons, an external audit is a greater safeguard against the possibility of impropriety in the management of state funds. Such an independent firm would be less susceptible to influence and in probability more capable of an unbiased analysis of the state's financial operation.

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Constitutional Convention

DELEGATE PROPOSAL NO. 275

BY DELEGATE FINCH

October 3, 1967.

Introduced, read the first time and referred to the Committee on
Personal Rights and the Preamble

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution contain a pro-
2 vision absolutely prohibiting any police power
3 or governmental agency of any nature from using
4 any eavesdropping or recording equipment, devices,
5 apparatuses, or processes.

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C O N S T I T U T I O N A L C O N V E N T I O N O F M A R Y L A N D

Memorandum Accompanying Delegate Proposal No. 275

Referred to Personal Rights and the Preamble

By: Delegate Walter G. Finch

This memorandum relates to the issue of eavesdropping, including, but not limited to, electronic surveillance, wiretapping, bugging, and all apparatuses, devices, and processes - known and unknown at present, such as extra-sensory perception in its various forms.

The great advance of the art of eavesdropping has caused serious question about infringement of people's privacy. Therefore, if this proposal is accepted, a ban against the use, except in cases of national security, of eavesdropping processes would be placed in the Constitution. Furthermore, favorable acceptance of this proposal is in accord with the line of Supreme Court cases which have addressed themselves to this issue.

On June 12, 1967, the United States Supreme Court decided, Berger v New York, 18 L. Ed 2d 1040, by a 5-4 decision, with an opinion that intimates a complete overhaul of constitutional principles in this area. The Court held that a statute which permitted a search with a court order was unconstitutional. The Court held the statute to be invalid since it permitted eavesdropping without a belief that a particular crime had been committed, and did not require sufficient particularity concerning the conversations to be overheard, and it authorized eavesdropping over too long a period. The opinion's approach to the eavesdropping problem is much broader in its implication.

The Berger Case (supra) was preceded by Silverman v United States, 365 U.S. 505, 81 S.Ct. 679, 5 L.Ed. 2d 734 (1961), where eavesdropping was accomplished by means of unauthorized physical penetration of a "spiked mike" into the premises occupied by the petitioners. Mr. Justice Stewart stated the law in the Silverman opinion:

#1. Eavesdropping accomplished by means of such a physical intrusion is beyond the pale of even those decisions in which a closely divided Court has held that eavesdropping accomplished by the electronic means did not amount to an invasion of Fourth Amendments rights. 365 U.S.

at 509-510, 81 S. Ct. at 682.

In Silverman the petitioners were convicted for illegal gambling activities substantially on the basis of conversations which federal police overheard by means of a microphone attached to a twelve-inch spike which was inserted through the party wall of petitioners' house. In effect, "the duct became a giant microphone running through the entire house occupied by appellants." 107 U. S. App. D. C. at 150, 275 F. 2d at 179 quoted in 365 U. S. at 509.

The Court in Silverman carefully distinguished that case from the situations presented in Goldman v United States, 316 U. S. 129, 62 S. Ct. 993, 86 L. Ed. 1322 (1942) and On Lee v United States, 343 U. S. 747, 72 S.Ct. 967, 96 L. Ed. 1270 (1952):

In Goldman v United States, supra, the Court held that placing a detectaphone against an office wall in order to listen to a conversation taking place in the office next door did not violate the Amendment. In On Lee v United States, supra, a federal agent, who was acquainted with the petitioner, entered the petitioner's laundry and engaged him in an incriminating conversation. The agent had a microphone concealed upon his person. Another agent, stationed outside with a radio receiving set, was tuned in on the conversation, and at the petitioner's subsequent trial related what he had heard. These circumstances were held not to constitute a violation of the petitioner's Fourth Amendment rights.

But in both Goldman and On Lee the Court took pains to point out that eavesdropping had not been accomplished by means of an unauthorized physical encroachment in a constitutionally protected area. 365 U. S. at 150.

The Court noted that the "trespass" doctrine dated back to Olmstead v United States, 277 U.S. 438, 48 S.Ct. 564 (1927) where the absence of physical intrusion of the petitioner's premises in the obtaining of evidence by wire tapping was a vital factor in determining the constitutional admissibility of the evidence. 365 U.S. at 510-511.

The Silverman Case, 365, U.S. 515, involved a trespass by federal police authorities, but whatever doubts existed as to the extent of the application of the Silverman doctrine to state police authorities have been dispelled. In a per curiam decision, Clinton v Virginia, 377 U.S. 158, 84 S.Ct. 1186, 12 L. Ed. 2d 213 (1964), the Court reversed petitioner's conviction in the Virginia state court which was substantially the result of the admission of eavesdropping evidence. The Supreme Court of Appeals of Virginia, 204 Va. 275, 130 S.E. 2d 437, 442 (1963) failed to see the application of the Silverman "trespass" doctrine where the eavesdropping device was a small "spike" mike:

The uncontradicted evidence is that it was not driven into the wall, but was "stuck in" it. This is the only evidence as to any penetration of the party wall and it is reasonable to assume that the penetration was very slight such as one made by a thumb tack to hold the small device in place. 130 S.E. 2d at 442.

However, the Supreme Court reversed, citing Silverman and Ker v. California, 374 U.S. 23, 83 S. Ct. 1623, 10 L.Ed 2d 726 (1963). The concurring opinion of Mr. Justice Clark makes it clear that the Court ruled an actual trespass of the petitioner's premises had occurred by use of the "spiked" mike by the Norfolk police. Not only does the Silverman decision apply to state and local police authorities, but the trespass doctrine is still very much alive.

Warden v Hayden, 87 S.Ct. 1642 (1967), decided two weeks before Berger, discarded the "mere evidence" rule. The Court emphasized that the primary purpose of the Fourth Amendment to protect privacy.

The present constitutional cases pertaining to the use of eavesdropping process permit a party to a discussion to surreptitiously record and transmit the conversation to law enforcement officers, even if the conversation takes place on the premises of the party against whom the evidence is used. However, the most recent case, Berger v New York, (supra) casts serious doubt upon the legality of this rule.

In present constitutional decisions, one party to a discussion may surreptitiously record and transmit the conversation to law enforcement officers, even if the conversation takes place on the premises of the party against whom the evidence is used. The most recent cases cast serious doubt upon the durability of this rule. (See Osborne v. United States, 385 U.S. 323 and the treatment of that case in Berger v New York, 18 L.Ed 2d 1040).

Federal and state statutes have filled in the gap left open by Olmstead, 277 U.S. 438. For example, the Federal Communications Act provides that "no person not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents or meaning of such intercepted communication....." Doubts as to whether the language of this 1934 statute was intended to apply to telephones, both intrastate as well as interstate calls, and to the activities of law enforcement officers, have all been resolved by an expansive reading of the statutory prohibition. Since divulgence of a wiretap is prohibited, wiretap evidence is, therefore, inadmissible in federal courts. The Supreme Court has also excluded the fruits of such evidence.

In conclusion, there should be a complete ban of all eavesdropping, of any type, except for national security, without the consent of the parties to the conversation. A ban would involve some sacrifice to the investigation process by law enforcement agencies, but it should encourage better law enforcement by utilizing other methods of crime detection. The ban also minimizes the terrifying potential use of eavesdropping apparatuses, devices, and processes, and thus makes a major contribution to the freedom of privacy. (For additional information, see Case and Comment, The Lawyer's Magazine, September-October, 1967, volume 72, No.5, pp 3 to 14 entitled "Wire Tapping and Bugging").

Constitutional Convention

DELEGATE PROPOSAL NO. 276

BY DELEGATE Wheatley

October 3 , 1967.

Introduced, read the first time and referred to the Committee on
General Provisions.

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that Article VIII, Section 8.04 of
2 the Constitution dealing with higher education
3 shall read as follows:

4
5 The governing boards of state institutions
6 of higher education established in accordance
7 with law shall have exclusive general super-
8 vision of such institutions as well as the
9 control and direction of all expenditures from
10 the institutions' funds as may be feasible and
11 consistent with their status as public agencies.

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Constitutional Convention

DELEGATE PROPOSAL NO. 277

BY DELEGATE Singer

October 4 , 1967.

Introduced, read the first time and referred to the Committee on
The Executive Branch

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that a provision be added to the
2 Constitution prohibiting any State official,
3 agency or branch of government from any action
4 which shall create, control or make appoint-
5 ments to any position, program or service
6 within the State without bearing the financial
7 responsibility for such action.
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CONSTITUTIONAL CONVENTION OF MARYLAND

MEMORANDUM ACCOMPANYING DELEGATE PROPOSAL NO. 277

This proposal is designed to restrict the fragmentation of responsibility between state and local governments. Its aim is prohibition of action by any level of State government, the cost of which is to be paid by a local subdivision. Presently the Governor appoints the Police Commissioner of Baltimore City, as well as the members of the Board of Elections, the Liquor Board and others, without having the responsibility of providing the necessary funds.

The reverse side of the coin reveals a local government paying for the cost of an important official or sensitive board without having that person or body responsible directly to it. If a state law or program is to be administered, the cost should be borne by the state. It is suggested that the current practice is violative of basic principles of sound government and weakens the fabric of local government throughout the state.

Delegate Marvin I. Singer

Maryland Room
University of Maryland Library
College Park, Md.

Constitutional Convention

DELEGATE PROPOSAL NO. 278

BY DELEGATE DELLA and BUSHONG

October 4, 1967.

Introduced, read the first time and referred to the Committee on
The Legislative Branch.

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that Article III of the Constitution
2 dealing with the Legislative Branch shall read
3 as follows:

ARTICLE III. LEGISLATIVE BRANCH

Section 3.01. Legislative Power.

11 The Legislative power of the State is vested in
12 the General Assembly of Maryland which shall con-
13 sist of two Houses: the Senate and the House of
14 Delegates.

Section 3.02. Legislative Districts; Special Provision for Senate.

19 The State shall be divided by law into dis-
20 tricts for the election of members of the Senate
21 and into districts for the election of members of
22 the House of Delegates. Each district shall con-
23 sist of compact and adjoining territory, and the
24 ratio of the number of legislators in each district
25 to the population of such district shall be as
26 nearly equal as practicable. The City of Baltimore
27 shall be divided into six ~~more~~ districts for the
28 election of members of the Senate and for the elec-
29 tion of members of the House of Delegates. The
30 Senators holding office prior to such general

election shall continue in office until the third Wednesday in January next ensuing when the Senators elected at such general election shall take office for a four year term. At least one Senator but not more than two Senators shall represent each Senatorial District; at least one Delegate, but not more than six delegates shall represent each House District. When it shall be constitutionally permissible under the Constitution of the United States to apportion membership in the Senate upon a basis other than the ratio of the number of Senators to the population of the State, the Senate on and after the next ensuing general election shall consist of one Senator from each of the six districts of the City of Baltimore and one Senator from each county in the State who shall be elected by the qualified voters of the six districts of Baltimore City and of the counties of the State respectively.

Section 3.03. Redistricting.

Within three months after official publication of the population figures of this State in each decennial census of the United States, if the General Assembly is not in session, the Governor shall convene a special session of the General Assembly for the purpose of congressional districting and legislative districting and apportionment. The General Assembly shall by Law enact plans of congressional districting and legislative districting and apportionment. If no plan has been enacted for any one or more of these purposes within eight months prior to the final date for the filing of candidates for the next general election occurring after publication of such census figures, the Governor shall prepare plans of congressional districting and legislative districting and apportionment which shall be submitted to the General Assembly not later than six months prior to such final date for the filing of candidates and if no plan has been enacted for any one or more of these purposes within four months prior to such final date for the filing of candidates, then the pertinent plan as presented to the General Assembly by the Governor shall become law. Upon petition of any qualified voter, the Court of Appeals shall have

1 original jurisdiction to review the congres-
2 sional districting and legislative districting
3 and apportionment of the State and grant appro-
4 priate relief, if it finds that any of them
5 does not fulfill constitutional requirements.

6
7 Section 3.04. Qualification for Senator
8 and Delegates.

9
10 To be eligible as a senator or delegate, a
11 person shall be a qualified voter of the State
12 of Maryland at the time of his election or
13 appointment, shall have been a resident of the
14 State for at least three years and a resident,
15 during the last year of that three year period,
16 of the senatorial or house district, as the case
17 may be, immediately preceding his election or
18 appointment. To be eligible as a senator a
19 person shall have attained the age of twenty-five
20 years and, to be eligible as a delegate, a person
21 shall have attained the age of twenty-one years,
22 at the time of that person's election or appoint-
23 ment.

24
25 Section 3.05. Election and Terms of Members
26 of General Assembly.

27
28 A member of the General Assembly shall be
29 elected by the qualified voters of the legis-
30 lative district from which election is sought
31 and shall serve for a term of four years begin-
32 ning on the third Wednesday of January following
33 such election.

34
35 Section 3.06. Persons Holding Office under
36 United States not Eligible as Senator or Delegate.

37
38 No member of Congress, or person holding any
39 civil, or military office under the United States,
40 shall be eligible as a senator, or delegate; and
41 if any person shall after his election as senator,
42 or delegate, be elected to Congress, or be
43 appointed to any office, civil, or military,
44 under the Government of the United States, his
45 acceptance thereof, shall vacate his seat.

46
47 Section 3.07. Ministers and Persons Holding Civil
48 Office under State Not Eligible as Senator or Delegate.

49
50 No minister or Preacher of the Gospel, or of any

1 religious creed, or denomination, and no person
2 holding any civil office of profit, or trust,
3 under this State, shall be eligible as Senator,
4 or Delegate.

5 Section 3.08. Vacancy in Office of Senator
6 or Delegate.

7
8 A vacancy in the General Assembly shall be
9 filled by appointment of the Governor, who shall
10 appoint a person whose name shall be submitted
11 to him in writing by the State Central Committee
12 of the political party with which the person
13 vacating the office had been affiliated in the
14 legislative district from which such person
15 was elected, and provided that such appointee
16 shall be a member of the same political party
17 as the party of the member who vacates such office.
18 Such appointment shall be made by the Governor
19 within fifteen days after the submission of the
20 name of the appointee to him. If there is no
21 such submission to the Governor within thirty
22 days after such vacancy occurs, the Governor
23 shall within another period of fifteen days
24 appoint a person who is duly qualified to hold
25 the vacated office in the legislative district
26 in which such vacancy occurs who is of the same
27 political party as the person whose office is
28 to be filled. The person appointed to fill the
29 vacancy shall serve only until the next general
30 election held more than ninety days after the
31 vacancy occurs, at which election any remaining
32 portion of the unexpired term shall be filled.

33
34 Section 3.09. Compensation of Members of
35 General Assembly. Limitation on Receipt of
36 Increase in Compensation.

37 Each member of the General Assembly shall
38 receive a compensation of Eight Thousand
39 Dollars (\$8000.00) per annum, payable quarterly,
40 with a deduction of Twenty-Five Dollars (\$25.00)
41 per diem for each day of unexcused absence from
42 any session, and such member shall also receive
43 such mileage as may be allowed by law, not ex-
44 ceeding Twenty Cents per mile. The presiding
45 officers of each House shall receive additional
46 compensation of Twenty-Five Hundred Dollars (\$2500)
47 per annum. When the General Assembly shall be
48 convened by proclamation of the Governor, no
49
50

1 additional compensation other than mileage
2 and other allowances provided by law shall be
3 paid to members of the General Assembly for
4 the special session. The General Assembly may
5 by law increase the compensation of members,
6 the compensation of officers of each House,
7 the mileage allowance and other allowances,
8 but no member shall receive any such increase
9 during the term of office of such member
10 during which the increase was authorized by law.

11
12 Section 3.10. Senator or Delegate Not
13 Eligible to Office Created, Etc., during His
14 Term.

15
16 No member of the General Assembly shall,
17 during the term of office for which he was
18 elected or appointed, be appointed to any office
19 which shall have been created, or the salary or
20 profits of which shall have been increased, by
21 the General Assembly during such term.

22
23 Section 3.11. Immunity of Members of
24 General Assembly.

25
26 A member of the General Assembly shall not
27 be liable in any civil action or criminal prose-
28 cution for any words used in any proceedings of
29 the General Assembly.

30
31 Section 3.12. Size of General Assembly.
32 Special Provision in Regard to Size and Repre-
33 sentation in the Senate.

34
35 The number of members of each House of the
36 General Assembly shall be as prescribed by law.
37 The number of members of the Senate shall be
38 twenty-nine when this is constitutionally per-
39 missible under the Constitution of the United
40 States as provided in Section 3.02 of this
41 Article III.

42
43 Section 3.13. Legislative Sessions.

44
45 The General Assembly shall convene in
46 regular session on the third Wednesday of
47 January of each year, unless otherwise pre-
48 scribed by law, and may continue in session
49 for a period not longer than seventy days;
50 provided, however, that by the affirmative

1 vote of three-fifths of all the members of each
2 house a session may be extended for a period
3 not longer than thirty days. The Governor may
4 convene a special session of the General
5 Assembly at any time and must convene a special
6 session upon the written request of three-fifths
7 of all the members of each House. Any special
8 session shall continue in session for not longer
9 than thirty days; provided, however, that by the
10 affirmative vote of three-fifths of all members
11 of each House, a special session may be extended
12 for a period not longer than fifteen days.

13
14 Section 3.14. Organization of General
15 Assembly.

16
17 Each House shall be the judge of the quali-
18 fications and selection of its members, as pre-
19 scribed by this Constitution and the laws of this
20 State. Each House shall elect its own officers
21 and determine its rules of procedure, and may per-
22 mit its committees to meet between sessions of the
23 General Assembly. Each House may, by the affirma-
24 tive vote of three-fifths of all its members,
25 compel the attendance and testimony of witnesses
26 and the production of records and papers either
27 before the House as a whole or before any of its
28 committees, provided that the rights and the
29 records and papers of all witnesses, in such cases,
30 shall have been protected by law. No person's
31 right to fair and just treatment in the course of
32 legislative and executive investigations shall be
33 infringed. Each House may punish a member for
34 disorderly or disrespectful behavior and may expel
35 a member by the affirmative vote of three-fifths
36 of all its members.

37
38 Section 3.15. Quorum.

39
40 A majority of all the members of each House
41 shall constitute a quorum for the transaction of
42 business; but a smaller number may adjourn from
43 day to day, and may compel the attendance of
44 absent members, in such manner, and under such
45 penalties, as each House may prescribe.

46
47 Section 3.16. Form of Laws.

48
49 The style of every law of this State shall be,
50 "Be it enacted by the General Assembly of Maryland";

1 and the General Assembly shall enact no law
2 except by bill. Every law enacted by the General
3 Assembly shall embrace only one subject, which
4 shall be described in its title. No law, nor
5 section of law, shall be revived or amended by
6 reference to its title or section only; nor shall
7 any law be construed by reason of its title, to
8 grant powers or confer rights which are not
9 expressly contained in the body of the act. It
10 shall be the duty of the General Assembly, in
11 amending any article or section of the code or
12 law of this State, to enact the article, section
13 or law as it would read when amended.

14
15 Section 3.17. Passage of Bills.
16

17 Any bill may originate in either House of
18 the General Assembly and be altered, amended or
19 rejected by the other, but no bill shall origi-
20 nate in either House during the last twenty
21 calendar days of a regular session, unless
22 two-thirds of the members elected thereto shall
23 so determine by yeas and nays; nor shall any bill
24 become a law until it be read on three different
25 days of the session in each House, unless
26 two-thirds of the members elected to the House
27 where such bill is pending shall so determine by
28 yeas and nays, and no bill shall be read a third
29 time until it shall have been actually engrossed
30 or printed for a third reading. No bill shall
31 become a Law unless it be passed in each House by
32 a majority of the whole number of members elected,
33 and on its final passage, the yeas and nays be
34 recorded; nor shall any Resolution, requiring the
35 action of both Houses, be passed except in the
36 same manner.

37
38 Section 3.18. Journal.
39

40 Each House shall keep a current, daily journal
41 of its proceedings which shall be open to public
42 inspection at all times and shall be published as
43 soon as practicable. No bill shall be enacted nor
44 shall a resolution requiring the action of both
45 Houses be adopted, unless it is passed in each
46 House by a majority of all the members of that
47 House. A vote in joint session or by either House
48 on any bill or resolution shall be taken only in
49 public session. On final passage of a bill, includ-
50 ing a bill proposing a constitutional amendment, or

1 a resolution, the vote cast by each member shall
2 be recorded in the journal of the House of which
3 he is a member.

4
5 Section 3.19. Consent Required for Adjournment.

6
7 Neither House shall, without the consent of the
8 other, adjourn for more than three days, at any one
9 time, nor adjourn to any other place, than that in
10 which the House shall be sitting, without the con-
11 current vote of two-thirds of the members present.

12
13 Section 3.20. Impeachments.

14
15 The House of Delegates shall have the sole
16 power of impeachment in all cases; but a majority
17 of all the members elected must concur in the
18 impeachment. All impeachments shall be tried by
19 the Senate, and when sitting for that purpose, the
20 senators shall be on oath, or affirmation, to do
21 justice according to the law and evidence; but no
22 person shall be convicted without the concurrence
23 of two-thirds of all the senators elected.

24
25 Section 3.21. When Laws Take Effect.

26
27 No Law passed by the General Assembly shall
28 take effect, until the first day of June, next after
29 the session, at which it may be passed, unless it be
30 otherwise expressly declared therein.

31
32 Section 3.22. Local and Special Laws.

33
34 The General Assembly shall not pass local, or
35 special Laws, in any of the following enumerated
36 cases, viz.: For extending the time for the collec-
37 tion of taxes; granting divorces; changing the name
38 of any person; providing for the sale of real estate,
39 belonging to minors, or other persons laboring under
40 legal disabilities, by executors, administrators,
41 guardians or trustees; giving effect to informal, or
42 invalid deeds or wills; refunding money paid into
43 the State Treasury, or releasing persons from their
44 debts, or obligations to the State, unless recommended
45 by the Governor, or officers of the Treasury Depart-
46 ment. And the General Assembly shall pass no special
47 Law, for any case, for which provision has been made,
48 by an existing General Law. The General Assembly, at
49 its first session after the adoption of this Consti-
50 tution, shall pass General Laws, providing for the

cases enumerated in this section, which are not
already adequately provided for, and for all
other cases, where a General Law can be made
applicable.

Constitutional Convention

DELEGATE PROPOSAL NO. 279

BY DELEGATES GALLAGHER AND BARD

October 4, 1967.

Introduced, read the first time and referred to the Committee on
Suffrage and Elections

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that Article III, Section 3.06,
2 dealing with the election of Legislators,
3 shall read as follows:

4

5

6

7

8 A member of the General Assembly shall be
9 elected by the qualified voters of the legis-
10 lative district from which he seeks election,
11 to serve for a term of four years. One half
12 of the members of each house shall be elected
13 every two years.

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In a memorandum dated October 14th, 1966, the Committee on the Legislative Department of the Constitutional Convention Commission requested that the full Commission re-evaluate its position on five key items. Although the Commission did review this minority report, the five key provisions remained unchanged in the final commission draft.

This proposal would implement the Committee on the Legislative Department's minority proposals on:

The members of the legislature should have staggered terms. One-half of the members of the legislature should be elected each two years. This would ensure a continuity of experience that would facilitate careful consideration of measures. Another major benefit, made vivid by the recent primary, would be the reduction in the number of candidates to be voted upon at election time.

Delegates Gallagher and Bard

Maryland Room
University of Maryland Library
College Park, Md.

Constitutional Convention

DELEGATE PROPOSAL NO. 280

BY DELEGATES GALLAGHER AND BARD

October 4 , 1967.

Introduced, read the first time and referred to the Committee on
The Legislative Branch

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that Article III, Section 3.17,
2 dealing with the Journal and Passage of Bills,
3 shall read as follows:

4
5
6 Each house shall keep a current, daily
7 journal of its proceedings which shall be open
8 to public inspection at all times and shall be
9 published as soon as practicable. A vote in
10 joint session or by either house on any bill
11 or resolution shall be taken only in public
12 session. On final passage of a bill, includ-
13 ing a bill proposing constitutional amendment,
14 or a resolution, the vote cast by each member
15 shall be recorded in the journal of the house
16 of which he is a member.

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MEMORANDUM TO ACCOMPANY PROPOSAL NO. 280

Harvard Law School
Library
Cambridge, Mass.

In a memorandum dated October 14th, 1966, the Committee on the Legislative Department of the Constitutional Convention Commission requested that the full Commission re-evaluate its position on five key items. Although the Commission did review this minority report, the five key provisions remained unchanged in the final Commission draft.

This proposal would implement the Committee on the Legislative Department's minority proposals on:

The legislature should be a continuing body and remain in session until the matters facing it are resolved. A legislature faced with a constitutional deadline for adjournment may have a spur to action, but forced action is often precipitous and unwise. The additional expense of a longer session is a small price to pay for obtaining a sound legislative product.

The legislature should divide its four year term into two two-year sessions for organizational purposes. The legislature, when convened, should continue its organizational existence for two years. This would eliminate the need to organize the second year when the legislature convenes and would permit the Senators and Delegates to commence work promptly at the point where the first year left off. This system has worked with great benefit and without trouble in the United States House of Representatives.

The Legislative Should have the power to convene itself. The legislature should be a branch with status equal to that of the executive and of the courts. When a problem arises, the leaders of the legislature should have power to convene it in session so that prompt corrective action can be taken. This power to adjust the law of the State in an emergency situation should not depend upon the whim of the governor. This is especially true since it is not inconceivable that the governor will be responsive to different political interests than the legislature.

Maryland Room
University of Maryland Library
College Park, Md.

Constitutional Convention

DELEGATE PROPOSAL NO. 281

BY DELEGATES GALLAGHER AND BARD

October 4 , 1967.

Introduced, read the first time and referred to the Committee on
The Legislative branch

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that Article III, Section 3.12,
2 dealing with Legislative Sessions, shall
3 provide that the General Asserby shall be
4 a continuous body and may divide into two
5 two-year sessions for organizational purposes,
6 to read as follows:

7
8 The General Assembly shall be a con-
9 tinuous body meeting for a four year term.
10 The four year term mav be divided into
11 two two-year sessions for organizational
12 purposes.

13
14 The Governor may convene the General
15 Assembly in special session at any time.
16 The Speaker of the House of Delegates and
17 the President of the Senate, acting concur-
18 rently, may convene a session of the General
19 Assembly at any time and must convene a
20 special session upon the written request
21 of a majority of all the members of each
22 house.

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In a memorandum dated October 14th, 1966, the Committee on the Legislative Department of the Constitutional Convention Commission requested that the full Commission re-evaluate its position on five key items. Although the Commission did review this minority report, the five key provisions remained unchanged in the final Commission draft.

Proposal No. 281 would implement the Committee on the Legislative Department's minority proposals on:

The vote for passage of a bill should be a majority of those present and voting and not a constitutional majority.

The vote required for passage of a bill or resolution, there being a quorum, should be a majority of those present. When a constitutional majority is required, a person who is absent is recorded, in effect, as casting a negative vote. This is true whether absence is caused by death, illness, or other unavoidable reason. It precludes the practice followed in Congress for a person, who knows he will be absent when the vote is taken, to pair his vote with that of a member intending to vote on the opposite side of the issue, so that their joint non-voting does not affect the outcome. Experience in Congress, in other legislatures, and in the Maryland Legislature shows that on crucial issues every member is present if at all possible. This means the danger is nil that a simple majority provision will enable some important or controversial measure to slip through without the concurrence of the majority of the elected membership. On the other hand, a simple majority vote requirement will enable routine and noncontroversial measures, which constitute the bulk of legislative enactments, to pass more expeditiously.

J. B. Room
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C. B. P.

Wingland Group
University of Maryland Library
College Park, Md.

Constitutional Convention

DELEGATE PROPOSAL NO. 282

BY DELEGATE FINCH

October 4 , 1967.

Introduced, read the first time and referred to the Committee on
The Executive Branch

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution contain a pro-
2 vision requiring the Legislature to establish
3 review procedures of rules and regulations adopted
4 by State Agencies, and matters generally related
5 thereto, read as follows:

6
7 No rule or regulation made by the state, a
8 department or agency of the state, any of the
9 political subdivisions of the state or their
10 administrative agencies, unless it shall relate
11 to organization or internal management, shall be
12 effective until 30 days after filing as required
13 by law, except that such rules or regulations
14 may be made immediately effective upon filing
15 when an emergency endangering the public health,
16 safety or welfare requires, or when premature
17 public disclosure is contrary to the public
18 interest. The Legislature shall provide for
19 notice of all proposed rules or regulations, and
20 shall enact a code of administrative procedure
21 which shall include provisions for independent
22 review of adjudicatory determinations and rules
23 and regulations promulgated under this section
24 on the application of any person whose rights
25 are or will be affected thereby. The code
26 shall be applicable to the state, all depart-
27 ments and administrative agencies of the state
28 and, to the extent practicable, its subdivisions
29 and their administrative agencies. Until such
30 code becomes effective, there shall be judi-

1 cial review of final adjudicatory findings
2 and determinations of such administrative
3 agencies, and thereafter there shall be such
4 judicial review thereof as shall be provided
5 by such code or by law.

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C O N S T I T U T I O N A L C O N V E N T I O N O F M A R Y L A N D

Memorandum Accompanying Delegate Proposal No. 282

By Delegate Walter G. Finch

Referred to: Executive Committee

Maryland Room
University of Maryland Library,
College Park, Md.

This proposal provides that no rule or regulation made by the State, a department or agency of the State or any of its political subdivisions, or their administrative agencies, unless it shall relate to organization, or internal management, shall be effective until thirty (30) days after filing thereof by law, except that such rules and regulations may be made immediately effective upon filing when an emergency endangering the public health, safety or welfare requires, or when premature public disclosure is contrary to the public interest.

The proposal further provides that the Legislature shall provide for notice of all proposed rules or regulations, and shall enact a code of administrative procedure which shall include provisions for independent review of adjudicatory determinations and rules and regulations promulgated under this proposal on the application of any person whose rights are or will be affected thereby. The code would further provide that it shall be applicable to the State, all departments and administrative agencies of the State and, to the extent practicable, its subdivisions and their administrative agencies. Until such code becomes effective, there shall be judicial review of final adjudicatory findings and determinations of such administrative agencies, and thereafter there shall be such judicial review thereof as shall be provided by such code or by law. This is substantially the proposal as adopted in the proposed new Constitution of New York.

Thus, the proposal would require the advance filing of rules and regulations of agencies of the State and of political subdivisions before they become effective, with certain exceptions. The Legislature is directed to provide for notice of all rules and regulations and to enact a code of administrative procedure which shall include provisions for independent review and such judicial review as shall be provided by law to apply to agencies of the State and, to the extent practicable to its various subdivisions.

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University of Maryland Library
College Park, Maryland

Such a proposal would eliminate arbitrary action in the promulgation of rules or regulations by the State, its various departments and instrumentalities and political subdivisions.

Constitutional Convention

DELEGATE PROPOSAL NO. 283

BY DELEGATE SOLLINS

October 4 , 1967.

Introduced, read the first time and referred to the Committee on
Legislative Branch

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that tne Legislative Article of
2 the Constitution provide that no vote on
3 the final passage of a bill shall be taken
4 until the bill has been printed in final
5 form and until at least five Legislative
6 session days after introduction.

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Constitutional Convention

DELEGATE PROPOSAL NO. 284

BY DELEGATE SOLLINS

October 4, 1967.

Introduced, read the first time and referred to the Committee on
Legislative Branch.

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Legislative Article of
2 the Constitution provide for a public
3 hearing on each bill introduced into the
4 State Legislature and that reasonable and
5 adequate notice of each hearing be provided
6 to all interested citizens of Maryland.
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Constitutional Convention

DELEGATE PROPOSAL NO. 285

BY DELEGATE FINCH

October 4, 1967.

Introduced, read the first time and referred to the Committee on General Provisions.

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Declaration of Rights
2 of the Constitution shall contain a provision
3 requiring the Legislature to provide consumers
4 with power to learn full cost and quantity
5 of their purchases and credit, to read as
6 follows:

7

8

9 (a) The protection and education of the
10 people of the State against unfair, unequitable
11 or dishonest sales, marketing, unfair trade, and
12 financial practices are and shall continue to be
13 State concerns.

14

15 (b) Any person who purchases goods or
16 services in this State shall be fully informed
17 in a reasonable manner of the precise quantity
18 and sales price, the total purchase price per
19 standard unit of quantity for such goods, in-
20 cluding all credit, service or other fees, and
21 all other material conditions of such sale.
22 The Legislature shall provide for the imple-
23 mentation of this section.

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Constitutional Convention

DELEGATE PROPOSAL NO. 286

BY DELEGATE HUTCHINSON

October 4, 1967.

Introduced, read the first time and referred to the Committee on
Suffrage and Elections

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL providing that college students whose
2 primary domicile is in another area of the
3 State, will not be allowed to vote at the local
4 elections of the community in which the college
5 is located, unless so allowed by the local
6 government.

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Journal of American Studies

Volume 24, Number 1, February 1990

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Constitutional Convention

DELEGATE PROPOSAL NO. 287

BY DELEGATE Finch

October 4, 1967.

Introduced, read the first time and referred to the Committee on
Personal Rights and the Preamble

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL to include in the Declaration
2 of Rights of the Constitution, a provision
3 granting any citizen the right to bring a
4 legal action against the State or its sub-
5 division to restrain unconstitutional expendi-
6 ture to read as follows:

7

8 Any citizen of this State shall have the
9 right to maintain a Taxpayer's suit or pro-
10 ceeding against any official, employee, or
11 instrumentality of the State or a political
12 subdivision thereof, to restrain a violation of
13 the provisions of the State Constitution or the
14 Constitution of the United States, including
15 but not limited to unconstitutional expendi-
16 tures. The Legislature may provide for such
17 action or proceeding.

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CONSTITUTIONAL CONVENTION OF MARYLAND

Memorandum Accompanying Delegate Proposal No. 287

By Delegate Walter G. Finch - referred to Personal Rights
and the Preamble

This proposal relates to having a provision in the State Constitution granting any citizen the right to bring a legal action against the State or its subdivisions to restrain unconstitutional expenditures as well as to restrain any violation of the provisions of the State Constitution. The Legislature may provide for such action or proceeding.

One of the doctrines developed by the judiciary as more or less of an internal administrative device is the "standing" doctrine. Another such doctrine is the "justifiable issue" doctrine. The effect of these doctrines, simply stated, is that they act to prevent certain individuals from presenting their case before the court. Therefore, for example, an individual may feel that he is being hurt or prejudiced or will be hurt or prejudiced by certain actions taken by the State and may want to challenge the validity of the action of the State in Court. However, if the Court feels that the individual can demonstrate no clear, immediate, substantial harm, then the individual is not permitted to litigate the merits of his contention before the Court.

Such doctrines as standing, which have the effect of closing the Courthouse doors, are particularly confounding in the area of alleged unconstitutional expenditure of funds. Taxpayers literally pour a great measure of their earnings into the State until and it seems only eminently just that these people may at least be heard when they earnestly contend that government monies are being misspent. The mere fact that they cannot trace their particular funds into any particular channel, of relative impossibility, should not be allowed to override the general point - that their money is involved somewhere in government spending.

As the government continues to expand its activities and spending and taxes continue to increase, it becomes more important than ever that vigilance as to the legitimacy of government spending be maintained. Let, then, the Constitution sweep aside well intentioned but arbitrary judicial doctrines which work to heighten the already anonymous image of the individual and increase his feeling of loss and frustration with this proposal which will trumpet the right of a lone taxpayer to take his case to Court. Without access to the Courts, the minority, even the substantial minority, has little recourse - and, as was pointed out long ago, if all the world but one were of one opinion, the right of that one to be heard should be maintained at all costs.

Maryland Room
University of Maryland Library
College Park Md

Constitutional Convention

DELEGATE PROPOSAL NO. 288

BY DELEGATE FINCH

October 4 , 1967.

Introduced, read the first time and referred to the Committee on
Local Government.

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution contain a
2 provision requiring a public hearing before
3 creation of any public authority, and matters
4 generally related thereto, to read as follows:
5

6 No public authority shall be created except
7 by special act after a public hearing held in
8 the manner prescribed by law, nor shall the
9 fiscal powers, functional or area jurisdiction
10 or term of existence of a public authority be
11 enlarged except in the same manner. Every
12 special act creating a public authority shall
13 contain a provision of its termination.
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CONSTITUTIONAL CONVENTION OF MARYLAND

Memorandum Accompanying Delegate Proposal No. 288

By Delegate Walter G. Finch

This proposal urges a constitutional provision wherein that no public authority shall be created except by special act after a public hearing held in the manner prescribed by law. In addition, the proposal calls for all of the fiscal powers, functional or area jurisdiction or term of existence of a public authority not be enlarged except in the same manner. The proposal further would require that every special act creating a public authority shall contain a provision of its termination.

This proposal would require the holding of a public hearing before any public authority (public agency or corporation) could be created. The giving of reasonable notice and an opportunity to be heard are necessary corollary of such a public hearing. The general public and particularly those individuals or parties who would be particularly affected by such a public authority should be given notice of such hearing and an opportunity to be heard regarding the creating of such authority. The periodical requirements of notice, hearing and opportunity to be heard would also be applicable when consideration is being given to an enlargement of the fiscal powers, term of existence, or functional or area jurisdiction of such a public authority.

This would give the people a meaningful opportunity to participate in the functioning of government as well as the opportunity to voice their opinions as to whether the proposed public authority should be created and whether its power, jurisdiction, etc. should be extended.

Maryland Room
University of Maryland Library
College Park, Md.

Constitutional Convention

DELEGATE PROPOSAL NO. 249

BY DELEGATES BARD AND MITCHELL

October 4, 1967.

Introduced, read the first time and referred to the Committee on
Personal Rights and the Preamble

By order, IRA J. WAGONHUT, Chief Clerk

TITLE

1 A PROPOSAL that the Declaration of Rights
2 of the Constitution contain a provision
3 concerning due process of law, to read as
4 follows:

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9 No person shall be deprived of life,
10 liberty or property without due process
11 of law, or be denied the equal protection
12 of the laws, or be subject to discrimination
13 in public service and facilities because of
14 religion, race, color or national origin.

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Constitutional Convention

DELEGATE PROPOSAL NO. 290

BY DELEGATES SCHNEIDER, BOILEAU, HICKMAN, KAHL,
MURPHY, RUSH, SIEWIERSKI

October 4, 1967.

Introduced, read the first time and referred to the Committee on

The Judicial Branch

By order, IRA J. WAGONHEIM Chief Clerk.

TITLE

1 A PROPOSAL that there be specifically delegated
2 to the Counties the power to establish the offices
3 of Sheriff and County Clerk, to prescribe the
4 functions of such offices, and the manner in which
5 they are to be filled.

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1. Introduction

The purpose of this document is to provide a comprehensive overview of the project's objectives, scope, and deliverables.

This document is organized as follows:

- 1. Introduction
- 2. Objectives
- 3. Scope
- 4. Deliverables
- 5. Timeline
- 6. Resources
- 7. Risks
- 8. Conclusion

The following sections provide a detailed description of each component.

The project is designed to meet the following objectives:

- 1. To develop a comprehensive project plan.
- 2. To identify and manage project risks.
- 3. To ensure the project is completed on time and within budget.
- 4. To provide a clear and concise report of the project's progress.

The project's scope is defined by the following requirements:

- 1. The project must be completed by the end of the year.
- 2. The project must be completed within a budget of \$100,000.
- 3. The project must be completed with a minimum of 90% satisfaction.

The project's deliverables are defined by the following requirements:

- 1. A comprehensive project plan.
- 2. A risk management plan.
- 3. A project progress report.
- 4. A final project report.

The project's timeline is defined by the following requirements:

- 1. The project must be completed by the end of the year.
- 2. The project must be completed within a budget of \$100,000.
- 3. The project must be completed with a minimum of 90% satisfaction.

The project's resources are defined by the following requirements:

- 1. A project manager.
- 2. A project sponsor.
- 3. A project steering committee.
- 4. A project team.

The project's risks are defined by the following requirements:

- 1. The project must be completed by the end of the year.
- 2. The project must be completed within a budget of \$100,000.
- 3. The project must be completed with a minimum of 90% satisfaction.

The project's conclusion is defined by the following requirements:

- 1. The project must be completed by the end of the year.
- 2. The project must be completed within a budget of \$100,000.
- 3. The project must be completed with a minimum of 90% satisfaction.

Constitutional Convention

DELEGATE PROPOSAL NO. 291

BY DELEGATE STORM

October 4, 1967.

Introduced, read the first time and referred to the Committee on
State Finance and Taxation

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Declaration of Rights con-
2 tain a provision dealing with essential services
3 provided by business enterprises regulated by
4 government and matters generally relating thereto,
5 to read as follows:

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9
10 Essential services provided by businesses
11 affected with a public interest, subject to
12 regulation and the profits of which are regulated by
13 the government shall provide such services as
14 economically and efficiently as possible, the costs
15 of said services to be tax free.

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Constitutional Convention

DELEGATE PROPOSAL NO. 292

BY DELEGATE S TAWES AND JAMES

October 5 , 1967.

Introduced, read the first time and referred to the Committee on
The Executive Branch

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the State Treasurer shall be
2 elected by the Legislature.

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Constitutional Convention

DELEGATE PROPOSAL NO. 293

BY DELEGATE GALLAGHER

October 5, 1967.

Introduced, read the first time and referred to the Committee on
Suffrage and Elections

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Legislative Article
2 of the Constitution contain a provision
3 authorizing the initiative petition procedure
4 whereby groups of voters may submit bills to
5 the General Assembly, to read as follows:
6
7 Section 3.16 (first sentence) of the draft
8 constitution shall read as follows:
9
10 A bill may originate in either house of
11 the General Assembly or may be submitted
12 by a group of qualified voters by initiative
13 petition. Bills may be altered, amended,
14 passed, or rejected by either house.
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THE JOURNAL OF THE ROYAL ANTHROPOLOGICAL INSTITUTE

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1900

VOLUME LXXI

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MEMORANDUM TO ACCOMPANY PROPOSAL NO. 293

Article 48 of the constitution of Massachusetts vests the legislative power in the legislature, but the people reserve the right of initiative petition. The procedure provides for ten or more voters to submit a petition to the Attorney General. He must certify that it is in the proper form and is not the same as any measure similarly submitted during the preceding three years. The petition is then filed with the Secretary of the Commonwealth who transmits it, upon the convening of the legislature, to the Clerk of the House of Representatives, and the proposed measure is then deemed to be introduced and pending. It is referred to a committee, the petitioners and interested parties heard, and the measure considered and reported to the legislature with the committee's recommendations in writing.

This delegate proposal would put the general idea of the initiative petition in the Maryland Constitution but would leave all procedural details to the legislature.

Delegate Gallagher

Maryland Room
University of Maryland Library,
College Park, Md.

Constitutional Convention

DELEGATE PROPOSAL NO. 294

BY DELEGATE GALLAGHER

October 5, 1967.

Introduced, read the first time and referred to the Committee on
The Legislative Branch

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitution contain a
2 provision dealing with the election and term
3 of office of members of the General Assembly,
4 to read as follows:

5

6

7 A member of the General Assembly shall
8 be elected by the qualified voters of the
9 legislative district from which he seeks
10 election, to serve for a term of four years
11 beginning on the first Wednesday of February
12 following his election.

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Constitutional Convention

DELEGATE PROPOSAL NO. 295

BY DELEGATE STORM

October 5, 1967.

Introduced, read the first time and referred to the Committee on
State Finance and Taxation

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that regulated public service
2 companies and co-operatives furnishing
3 energy, water, sewerage, communications
4 and mass transit services shall be exempt
5 from taxation in the same manner and to
6 the same extent as agencies of state and
7 local governments as to their income
8 derived from furnishing public services
9 and as to their property, both real and
10 personal, used and useful in supplying
11 such services to the public, provided
12 that as to all other property and income,
13 such public service companies and co-oper-
14 atives shall be taxed in the same manner
15 and to the same extent as other privately
16 owned business ventures are taxed by state
17 and local governments.

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NOTE: This proposal amends Delegate Proposal
No. 222 by adding co-operatives.

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Constitutional Convention

DELEGATE PROPOSAL NO. 296

BY DELEGATE L.TAYLOR

October 5 , 1967.

Introduced, read the first time and referred to the Committee on
Personal Rights and the Preamble

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL to include in the Bill of Rights
2 of the Constitution a provision that would
3 guarantee "open occupancy" that would read as
4 follows:
5
6
7 No resident or citizen of the State shall be
8 denied the right to purchase property or goods
9 presented for public sale because of race, color,
10 religion, or national origin.

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Constitutional Convention

DELEGATE PROPOSAL NO. 297

BY DELEGATE L. Taylor

October 5, 1967.

Introduced, read the first time and referred to the Committee on
Personal Rights and the Preamble

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL to include in the Bill of Rights
2 of the Constitution a specific equal protection
3 and due process right of access to public faci-
4 lities that would read as follows:

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8 No resident or citizen of the State shall be
9 denied the right of access to public facilities
10 or facilities open to the public because of race,
11 color, religion, or national origin.

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Constitutional Convention

DELEGATE PROPOSAL NO. 298

BY DELEGATE STORM

October 5, 1967.

Introduced, read the first time and referred to the Committee on
State Finance and Taxation

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Declaration of Rights
2 contain the following provision dealing with
3 the levying and collecting of taxes and matters
4 generally relating thereto, to read as follows:

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8 That the levying of taxes by the poll is
9 grievous and oppressive, and ought to be pro-
10 hibited; that paupers ought not to be assessed
11 for the support of the Government; that the
12 General Assembly shall, by uniform rules, pro-
13 vide for the separate assessment, classification
14 and sub-classification of land, improvements on
15 land and personal property, as it may deem proper;
16 and all taxes thereafter provided to be levied by
17 the State for the support of the general State
18 Government, and by the Counties and by the City
19 of Baltimore for their respective purposes, shall
20 be uniform within each class or sub-class of land,
21 improvements on land and personal property which
22 the respective taxing powers may have directed to
23 be subjected to the taxlevy; yet fines, duties
24 or taxes may properly and justly be imposed, or
25 laid with a political view for the good government
26 and benefit of the community. State and local
27 taxes should, wherever possible, be levied and
28 collected in such a manner that the taxpayer may
29 be able to deduct the same under the federal
30 income tax rules allowing deductions for taxes paid.

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Constitutional Convention

DELEGATE PROPOSAL NO. 299

BY DELEGATES Kirkland, Sosnowski, Blair, Caldwell

October 5, 1967.

Introduced, read the first time and referred to the Committee on
General Provisions

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that the Constitutional Convention
2 Committee studying the sections pertaining to
3 higher education give full consideration to the
4 inclusion into their final draft a Coordinating
5 Council of Higher Education which would replace
6 the present Advisory Council to Higher Education.

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Constitutional Convention

DELEGATE PROPOSAL NO. 300

BY DELEGATE Hutchinson

October 5 , 1967.

Introduced, read the first time and referred to the Committee on
Suffrage and Elections

By order, IRA J. WAGONHEIM, Chief Clerk.

TITLE

1 A PROPOSAL that a Local Government, whether it be
2 County, Municipal, or Regional, may allow any
3 person to vote so long as its restrictions do
4 not conflict with the minimum requirements for
5 voter qualification established by this Conven-
6 tion.
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THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION

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